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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 42

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

BRIEF FOR APPELLANTS.

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THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO 56

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JURISDICTION.

The highest court of Missouri, rejecting contentions based on the Constitution of the United States, held valid as applied to employees of an employer engaged in interstate commerce the seizure-no-strike provisions of a Missouri statute popularly known as the King-Thompson Act. Its judgment (R. 361), affirming as modified the final judgment of the Circuit Court of the City of St. Louis, was entered September 29, 1958, and its order modifying opinion and overruling appellants' motion for rehearing was entered November 10, 1958 (R. 374). Appellants' notice of appeal was filed in the Supreme Court of Missouri on January 23, 1959 (R. 1-4). Jurisdiction to review the decision by direct appeal is explicitly conferred on this Court by Title 28, United States Code § 1257(2). On May 4, 1959, this Court entered its order (R. 375), postponing further consideration of the question of jurisdiction to the hearing of the case on the merits, 359 U. S. 982. That question is discussed below at pp. 30-34.

QUESTION PRESENTED.

Whether Missouri may, consistently with the National Labor Relations Act, Article VI of the Constitution of the United States and the Fourteenth Amendment, apply to employees of a privately owned gas company which affects interstate commerce and to their collective bargaining representatives a statute which provides that in the event of a threatened or actual strike the State may "take possession" of the "public utility", makes it "unlawful" after such "taking" to strike, and authorizes the state courts to enforce the prohibition by injunction and other legal or equitable remedies.

STATUTES INVOLVED.

Relevant provisions of the King-Thompson Act (Ch. 295, R. S. Mo., 1949) are summarized below and the entire Act is printed in Appendix A, *infra*, pp. 37-47. Relevant provisions of the National Labor Relations Act (61 Stat. 136, 29 U. S. C. § 141, *et seq.*), are printed in Appendix B, *infra*, pp. 48-50.

STATEMENT.

A. The Statutory Scheme by Which Missouri Outlaws Strikes in Public Utilities.

The King-Thompson Act became effective September 10, 1947. Laws of Missouri, 1947, p. 358. It declares (Section 295.010) that "heat, light, power, sanitation, transportation, communication and water are life essentials of the people" and that "the possibility of labor strife" in industries supplying these services, defined as "public utilities" (Section 295.020(1)), "is a threat to the welfare and health of the people." The Act further declares that the "state's regulation of the labor relations affecting such public utilities is necessary in the public interest." (Section 295.010.)

Section 295.180(1) provides that if a strike, lockout or work stoppage occurs which, in the opinion of the Governor, "threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare," the Governor may "take immediate possession" of the utility. Section 295.180(2) provides that seizure may occur after investigation and proclamation by the Governor that "there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, * * * that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility * * *."

Section 295.200(1) provides that "after any plant, equipment or facility has been taken over by the state under this chapter" it "shall be unlawful for any person, employee or representative * * * to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state * * * as means of enforcing any demands against the utility or against the state." Violation entails the following consequences: It is "unlawful" for any public utility "to employ" any person or employee who has participated in a strike after seizure except "as a new employee" (Section 295.200(2)); for "each day" after seizure that a labor organization or labor union allows a strike which it has called, incited or supported to continue, it "shall forfeit and pay to the state of Missouri * * * the sum of ten thousand dollars * * * to be recovered by civil action in the name of the state * * *" (Section 295.200(3)); any union officer who supports a strike after seizure forfeits and must pay to the State one thousand dollars (Section 295.200(4)). The courts of Missouri are empowered "to enforce by injunction or other legal or equitable remedies any provision of this chapter * * *." Section 295.200(6).

Section 295.180(2) provides that any public utility "taken" under the provisions of the Act "by reason of" a labor dispute "shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute."

B. The Missouri Statute Is Applied to Outlaw a Strike by Employees and Representatives of Employees of Laclede Gas Company.

Laclede Gas Company, a private Missouri corporation, is engaged in furnishing natural gas to industrial, commercial and domestic users in the St. Louis area (R. 32-33, 55-56). For the year ending December 31, 1955

Laclede's gross revenue was in excess of $41,000,000 (R. 342; 62). During the same period its purchases from outside the State of Missouri, including natural gas, exceeded $20,000,000 (R. 61). Laclede's operations affect interstate commerce within the meaning of the Act (R. 342), and the National Labor Relations Board has uniformly asserted its jurisdiction over the Company's labor relations (R. 65, 147-152, 153-155).[3]

Local 8-6, Local 8-109, and Local 8-194, Oil, Chemical and Atomic Workers International Union, hereinafter called the Locals, are labor unions which, under NLRB certifications, represent various units of Laclede's employees (R. 338; 64-65, 147, 152-155). The predecessor of Local 8-6, which represents the production and maintenance workers (R. 338; 35, 148),[4] obtained recognition from the Company through strike action in 1935 (R. 147). Historically, contracts between the Locals and the Company predicate valuable benefits, terms and conditions of employment, upon recognition of seniority with the Company (R. 156-160, D. Exh. F, G and H).

More than sixty (60) days prior to June 30, 1956, the

3. Under the jurisdictional policy standards announced by the Board in 1954; it asserted jurisdiction over all local public utilities which had a gross revenue of $3,000,000, or more. *Greenwich Gas Company and Fuel Inc.*, 110 NLRB 564 (R. 210-211). Under the revised standards announced on October 2, 1958, the Board asserts jurisdiction "over all public utilities which do a gross volume of business of at least $250,000 per annum or which have an outflow or inflow * * * across State lines, of $50,000 or more per annum." *Sioux Valley Empire Electric Assn.*, 122 NLRB No. 18; 43 LRRM 1061. The Board pointed out that by the revision it "endeavored reasonably to ensure that its jurisdiction will be exercised over all labor disputes involving local public utilities which exert or tend to exert a pronounced impact on commerce." *Ibid.* See p. 29 *infra*.

4. Local 8-109 represents foremen; Local 8-194 represents clerical workers (R. 338; 34-35, 153, 154-155). At all material times, all Locals were in compliance with all relevant provisions of the Taft-Hartley Act (R. 144-145, 212-213).

expiration date of the then current collective bargaining contracts, the Locals notified Laclede of their desire to negotiate improved terms and conditions (R. 339; 82-83). In issue during negotiations were wages, vacations, making of riser connections and the like (R. 339; 68, 160-164, 217, 220). Pursuant to the provisions of the National Act, the Locals timely notified both the Federal Mediation and Conciliation Service and the Missouri State Board of Mediation of the existence of a labor dispute on these issues (R. 339; 69, 166, 203-207, 255). Negotiations continued through June 30, 1956 (R. 339; 219). When the old contract expired without agreement having been reached, the Locals went on strike (R. 339; 164-165, 218-220). All employees in the bargaining units represented by the Locals, approximately 2200, participated in the strike; supervisors and others outside the units, approximately 300, remained at work (R. 36).

Shortly before the strike began, Mr. Ramsey, Laclede's Vice President in Charge of Personnel, asked the Locals' negotiating committee whether the Union intended to set up "emergency crews" (R. 242-243, 220-221). He was advised that "the Union would set up a sufficient amount of people to handle any emergency out of our union office, and that we had additional telephones [and] would answer the calls of the public" (R. 221-222, 243). Laclede made no other proposal for handling emergency calls (R. 222). The public was notified by advertisements in the newspapers on the morning of July 1, of the availability of emergency service during the strike, and of the telephone numbers to call (R. 348; 71, 89, 222-223).[5]

5. The emergency crews, composed of employees of the Service and Installation department who normally performed this work (R. 222, 242), were on duty during the strike on a twenty-four hour basis, providing more extensive emergency coverage than the Company maintained during normal operations on weekends and holidays (R. 194-195, 242-243, 72). Applying the same standard for distinguishing between "emergency" and "non-emergency"

On July 3, 1956, Daniel C. Rogers, Chairman of the State Board of Mediation (R. 254), who, unlike officials of the Federal Mediation and Conciliation Service (R. 166), had made no mediation or conciliation efforts in the dispute (R. 182, 219, 256, 257-258), met with officials of the Locals. He told them that by engaging in a strike against a public utility they were violating their obligation under the Public Service Commission Law under which "they, as well as the company, were obliged to render continuous and safe service to the public" (R. 348; 258-259). He urged them to call off the strike and return to work for the Company, stating that otherwise the Governor would be obliged to invoke the seizure law (R. 258-259).

On July 5, 1956, Governor Phil M. Donnelly issued a Proclamation and two Executive Orders (R. 339; 15-18, 31-32, 378-379), declaring that a labor dispute existed between Laclede and the Locals; that as a result Laclede's employees were on strike; that the strike threatened to interrupt Laclede's operations; that "the public interest, health and welfare are jeopardized as a result of the threatened interruption"; and that seizure under Section 295.180 was "necessary to insure" Laclede's "operation". By Executive Order No. 1, the Governor took "possession" of Laclede's facilities. By Executive Order No. 2 the Governor appointed Daniel C. Rogers agent of the Governor to exercise the Governor's authority with respect to the seizure. The Order provided that all of Laclede's "rules and regulations * * * governing the internal management

calls which they applied during periods of normal operation (R. 247, 225), the dispatchers received approximately 150 emergency calls between July 1 and July 13, to all of which the emergency crews responded (R. 348; 133, 222-229, 233-234, 243). During normal times, there are some two thousand unrepaired gas leaks in the Company's system in St. Louis County (R. 225). Calls concerning street leaks are not treated as emergencies, and repairs are often not made at all, unless the gas is leaking into a house or building (*Ibid.*, cf. R. 346).

and organization of the Company and its duties and responsibilities, shall remain in force and effect throughout the term of operation by the State of Missouri" (R. 379). The defendant unions continued the strike (R. 340; 13-14, 24, 174, 191).

On the evening of July 5, 1956, Rogers, on behalf of the Governor, made a television broadcast concerning the effects of the seizure (R. 178, 262, 264). He stated that despite the seizure "the striking employees * * * are working for the Laclede Gas Company. They are not employees of the State of Missouri"; that they will "report to work, when they wish to, to the Laclede Gas Company" (R. 179); that since they remain employees of Laclede the State of Missouri has no responsibility for their protection in the event of industrial injury or occupational disease and that only Laclede Gas Company is responsible therefor and for their coverage under the Unemployment Act and the Social Security Act (R. 180, cf. 264). He stated further that seizure "require[d] the employees to continue to render services to the Laclede" Gas Company; that "the obligation and the responsibility falls on the employees to stay at their jobs" because without them the Company is unable to "render its public utility services to the people" (R. 180-181). He acknowledged that according to the Supreme Court of Missouri (see *Rider* v. *Julian*, 365 Mo. 313, 282 S. W. 2d 484), "seizure under the King-Thompson Act is token seizure"; adding, "I don't run the company or give the people any orders or anything of any kind. They are not working for me. I am merely the agent of the State here representing the Governor to observe and see to it that the property of the Laclede Gas Company is available for operation. The employees, of course, are supposed to operate the property under directions of the

Laclede Gas Company itself." (R. 182, cf. 265).[6] See also R. 84-87.

Rogers further announced that "As of four o'clock today Central Standard Time, five o'clock your time, the proclamation and executive orders went into effect, and from that time on the employees are in violation of the law which provides that it shall be unlawful if, after seizure, they engage in a strike. So they are in violation of the law as of this time * * *. The employees, when the time arrives of a showing of resistance to the law, forfeit their seniority" (R. 183). He said that not only do the "employees forfeit their seniority rights", but that "the union was subject to a fine of ten thousand dollars a day and * * * the officers are subject to one total fine of one thousand dollars each" (R. 267).

On July 7, 1956, the State of Missouri filed suit against the Locals, appellants herein, pursuant to Section

6. At the hearing in this case, which began July 11, and ended July 13, 1956, Rogers testified that his seizure of the Laclede Gas properties consisted solely of delivering to the Company the Governor's proclamation and Executive Orders; that he "never was in the Laclede offices except that one time, and haven't been back since" (R. 267); "that the State of Missouri is not * * * operating the Laclede Gas Company"; that Laclede, not the State of Missouri, collects the receipts from the operations; that natural gas is purchased by Laclede Gas Company, not by the State (R. 268); that neither he nor anyone else on behalf of the State or the Governor of the State was signing vouchers, disbursement slips, checks, or any other evidence of debt, or authorization for payment of debt; that he did not have a Social Security number and did not intend to apply for one as an employer of employees of Laclede Gas Company (R. 268); that he has not put up any signs, notices, or anything else on the name plate or other Company identifications of its properties; that none of the properties of Laclede Gas Company have been conveyed, transferred or turned over to him in any way; that the Chairman of the Board and the President were fulfilling and discharging their functions in those offices for the Company; that they had not furnished any accounting or reports to the agent of the Governor and were not expected to account, and that the Superintendent of Production of the Company continued also to discharge the duties of the position without reporting or accounting to him (R. 268-270).

295.200(3) of the King-Thompson Act, to collect the forfeitures provided therein for their failure to terminate the strike following the seizure, No. 92,766-D (R. 313-317). In its opinion herein, the court below took judicial notice of this proceeding, which is now pending in the trial court (R. 341).[7]

C. Proceedings Below.

On July 9, 1956, the State of Missouri, pursuant to Section 295.200(6), filed suit in the Circuit Court of the City of St. Louis to enjoin appellants from continuing the strike (R. 340-341; 7-18). Appellants filed an answer, motion to dismiss and a petition for declaratory judgment (R. 340-341; 19-30, 82, 270-272). Admitting that they had continued the strike after seizure (R. 24), they alleged, *inter alia*, that the King-Thompson Act, as applied to employees of Laclede and their bargaining agents, is in conflict with the National Labor Relations Act, Section 8 of Article I, Article VI and

7. The State of Missouri also filed suit against individual officers of appellant unions under Section 295.200(4), to collect the forfeitures incurred by them as a result of their failure to call for termination of the strike after seizure. The State seeks to recover $1,000, each, from five individual defendants, each of whom is an appellant herein. This action, No. 92,765-D, is still pending in the Missouri courts. Shortly after July 13, 1956, the State of Missouri filed another suit against appellant Locals to collect additional forfeitures under Section 295.200(3) for their continuation of the strike from "July 7, 1956 to July 13, 1956." This suit No. 93,089-D) is also still pending. In No. 92,766-D, the State seeks to recover $10,000 each from the three Locals; in No. 93,089-D, it seeks to recover $70,000 each, a total of $240,000.

8. The record in that case came before the Supreme Court of Missouri, where it was docketed as No. 46,664, on appeal by the defendants from an order of the trial court, entered August 7, 1957, sustaining plaintiff's amended motion to dismiss defendants' counter petition for a declaratory judgment (R. 333-334; 336-337). The motion was predicated principally on the ground that the declaratory judgment in the instant case was *res judicata* of the issues raised by the plea for declaratory judgment therein (R. 331-332). On motion of appellee, the Supreme Court of Missouri, July 14, 1958, dismissed the appeal as premature.

the Fourteenth Amendment of the Constitution of the United States (R. 340-341; 25-30). In support of their application for declaratory judgment appellants alleged that the constitutionality of the statute under which the Governor had acted was in serious doubt; that the Governor threatened to enforce the monetary forfeiture and loss of seniority provisions of the statute against appellants and members of appellant unions because of their refusal to terminate the strike after the seizure, and that in view of the great and irreparable injury to which appellants were subjected it was appropriate and necessary to resolve the constitutional question—whether defendants were entitled to continue to strike after seizure—by declaratory judgment (R. 29-30, 271-272). Appellants further alleged that the controversy over constitutionality will continue as long as the Governor deems himself free to apply the seizure-no-strike provisions to Laclede and to other companies whose activities affect interstate commerce; that the Governor's threat to enforce the Act in future labor disputes deprives defendants and their members and all employees and their bargaining agents similarly situated of their rights under the National Labor Relations Act and the Constitution of the United States and that it interferes with the system of free collective bargaining which Congress determined should govern labor relations in these industries. (*Ibid.*)

The trial court specifically found that the defendants had unlawfully "incited, supported and participated in * * * a work stoppage and strike against the Laclede Gas Company * * * subsequent to" the seizure (R. 276; cf. 340, 348; 24, 191). On defendants' petition for declaratory judgment, the court rejected defendant's objections and declared the entire Act constitutional and valid (R. 295). It "ordered, adjudged and decreed" that the seizure was valid and enforceable, and that it was "unlawful * * * for the defendants to incite, support or participate in any strike or

concerted refusal to work for the Laclede Gas Company or the State of Missouri as a means of enforcing any demands against the Laclede Gas Company or the State of Missouri so long as" the Governor's seizure proclamation and orders "shall remain in force and effect." *Ibid.* The court issued an order as prayed, enjoining the appellants from "continuing, inciting, supporting and participating" in the strike (R. 277). On July 14, 1956, the day after the injunction issued, the strike was terminated (R. 341).

On appeal, the Supreme Court of Missouri limited its consideration to the seizure-no-strike provisions of the statute (R. 344). It held that, as applied to an employer like Laclede, who is concededly subject to the National Act, there is no conflict or material inconsistency between those provisions and federal law (R. 353, 354, 356, 361). It rejected the suggestion that because Laclede and the Locals had signed new contracts on August 10, 1956, and the Governor had consequently terminated the seizure on October 31, 1956, the case for determination of constitutionality was moot (R. 341-342).

SUMMARY OF ARGUMENT.

I.

A. The Missouri seizure-no-strike scheme offends federal policy in two respects: (1) it denies the right to strike and curtails the exercise of that right and (2) it frustrates free collective bargaining, the system for establishing wages, hours and working conditions which Congress decided should govern in local public utilities which affect interstate commerce. *Amalgamated Ass'n of Street, etc.* v. *Wisconsin Employment Relations Board*, 340 U. S. 383 (1951), controls this case. Here, as there, a state has made it unlawful to strike where the strike will interrupt "essential public utility services." *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 474-475.

The reasoning by which the court below upheld the Missouri Act follows the dissent rather than the opinion of the majority in *Amalgamated*. The contention that utility employees owe a special duty to serve the public which qualifies and supersedes their right to strike when interruption of utility service is threatened was advanced by the dissent and rejected by the majority in *Amalgamated*. Cf. *Teamsters Union* v. *Kerrigan Iron Works*, 353 U. S. 968. This Court found that contention incompatible with Congress' extension of the Act to public utilities without qualification; with its refusal to qualify or limit the right of employees of public utilities to strike; with its determination that the system of free collective bargaining should be preserved in privately owned public utilities as in all other enterprises subject to the Act; and with its rejection of proposals for denying the right to strike in "emergencies". "Creation of a special classification for public utilities is for Congress,

not for this Court * * *." *Amalgamated* case, 340 U. S. 383, 392-393.

The contention that exercise of state power to curtail the right to strike is not barred where its purpose is to maintain public utility service rather than to regulate labor relations is equally foreclosed. Where state regulation impairs the exercise of a Section 7 right, the rationale of the regulation and the interest which the state seeks to serve thereby is irrelevant; the regulation must fall. *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 479-480. Moreover, Missouri's token seizure scheme, designed "to prevent work stoppages", is a "technique to solve labor disputes." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586.

That Missouri, unlike Wisconsin, does not attempt to substitute for collective bargaining compulsory arbitration sharpens rather than mitigates the conflict resulting from its denial of the right to strike. Under compulsory arbitration the issues in dispute are resolved by neutrals, not unilaterally by one of the contestants. Under the Missouri seizure system outlawry of the strike imposes no pressure on the employer to yield to the employees' demands while it leaves the employees no choice but to work on the employer's terms. Moreover, Congress explicitly rejected seizure, just as it rejected compulsory arbitration, as a technique for resolving labor disputes in public utilities. It did so on the merits and not "because of any desire to leave the states free to adopt it." *Amalgamated* case, 340 U. S. 383, 395, and note 21. Just as a state is not "free to regulate 'local emergency' disputes" under a compulsory arbitration-no-strike statute (*Amalgamated* case, 340 U. S. 383, 393), so it is not free to do so under a seizure-no-strike statute.

The facts show, and the Supreme Court of Missouri has squarely held, *Rider* v. *Julian*, 365 Mo. 313, 282 S. W. 2d

484, that the state is not during seizure the "employer" of the utility company's employees in any sense. Consequently, it cannot be contended in this case that because of the exemption of states from the category of "employer" by Section 2(2), when seizure occurs the National Act ceases to apply to the dispute. Since under the Missouri law the private utility company remains the employer, seizure cannot alter the preemptive applicability of the National Act.

B. The 86th Congress affirmed and reenacted the rule of the *Amalgamated* case. It voted down (105 Cong. Rec. 6044), Senator Holland's amendment, designed to overrule *Amalgamated*, which provided that (105 Cong. Rec. 6037):

> Nothing in this Act or the Labor Management Relations Act, 1947, shall be construed to nullify the provisions of any State or Territorial law which regulate or qualify the right of employees of a public utility to strike, or which prohibit strikes by such employees.

Congress did adopt an amendment of the National Act designed to change the rule of *Guss* v. *Utah Labor Relations Board*, 353 U. S. 1, insofar as that case held that refusal by the Board to assert its jurisdiction over a labor dispute does not operate to lift the supersedure of state power. Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, Section 701(a). But by the same amendment Congress prohibited the Board from declining to assert its jurisdiction over any labor dispute covered by its policy standards in effect on August 1, 1959. Under those standards the Board asserts jurisdiction, *inter alia*, "over all labor disputes involving local public utilities which exert or tend to exert a pronounced impact on commerce." *Sioux Valley Empire Electric Assn.*, 122 NLRB No. 18. Thus, Congress applied the preemption rule specifically to local public utilities. Now, less than ever, is creation of "a special classification for public utilities"

or "local emergencies" a job for this Court. Cf. the
sent in the *Amalgamated* case, 340 U. S., at 403.

II.

The court below correctly held that the case for decla
tory judgment, ripe for adjudication when the trial c
ruled (*Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U
579, 585), is not moot. The state is actively seeking
enforce against appellants the substantial monetary
feitures which they incurred by continuing the strike a
seizure and the employees are in jeopardy of losing th
valuable seniority rights, as the statute provides in s
cases they shall. In view of the "possible liability"
substantial penalties and the potential loss of senio
to which appellants "might be subjected if the legali
of Missouri's outlawry of the strike after seizure "w
not determined," the case for determining constituti
ality remains a live controversy. *So. Pacific Co.* v. *Inters
Comm. Comm.*, 219 U. S. 433, 452.

This case is entirely distinguishable from *Harris*
Battle, 348 U. S. 803, where the seizure which appella
sued to enjoin did not carry as a consequence illegaliza
of the strike or make its continuation unlawful. In
Harris case the Union did not violate the statute in
way; no potential liability of any kind was incurred dur
seizure and none survived its termination. Moreover,
der the Virginia law, the state appears during seizure
operate the utility *qua* employer on its own account,
the question on the merits is accordingly quite differ
from the issue here.

Apart from potential surviving liabilities and burd
where, as here, it is clear that a state does not by vi
of "seizure" become the "employer", execution of a

tract between the union and the utility company after a strike has been illegalized and its continuation enjoined should not be deemed to render moot the controversy concerning the validity of the prohibition and the constitutionality of the statute which authorized it. Settlement of a labor dispute after the right to strike has been unlawfully denied is not the product of free collective bargaining but of the state's illegal interference with it. Missouri's discontinuance of its illegal restraint after its object has been achieved and its perpetuation thereby rendered unnecessary "does not operate to remove [the] case from the ambit of judicial power." *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, 43.

Finally, the State's threat to apply the King-Thompson Act in future labor disputes constitutes a continuing impairment of federally guaranteed rights and a continuing obstacle to the effectuation of federal policy, which alone suffices to prevent the controversy from being considered moot. Missouri's threat stultifies the collective bargaining process in the very manner which led Congress to reject statutory provisions for seizure on the ground that their mere existence is incompatible with the system of collective bargaining it desired to promote and protect. The threat to seize under the Missouri law enterprises covered by the National Act "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67. While that threat persists the constitutional controversy remains ripe for adjudication.

ARGUMENT.

I.

THE SEIZURE-NO-STRIKE PROVISIONS OF THE MISSOURI LAW CONFLICT WITH FEDERAL LAW.

A. The Amalgamated Decision Is Controlling.

Applied to Laclede and similar enterprises which are subject to the National Act, the Missouri seizure-no-strike scheme offends federal policy in two respects: (1) it denies the right to strike and curtails the exercise of that right and (2) it frustrates free collective bargaining, the system for establishing wages, hours and working conditions which Congress determined should govern in local public utilities, as in all other industries. *Amalgamated Ass'n of Street, etc.* v. *Wisconsin Employment Relations Board*, 340 U. S. 383 (1951), controls this case. The Wisconsin statute at issue in *Amalgamated*, as this Court subsequently observed in *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 474-475, "made it a misdemeanor to interrupt by strike any essential public utility services. It was held that the state statute was invalid in that it denied a right which Congress had guaranteed under §7 of the Taft-Hartley Act—the right to strike peacefully to enforce union demands for wages, hours and working conditions." In upholding the seizure-no-strike provisions of the King-Thompson Act, which likewise makes it illegal to interrupt a utility service by strike, the Supreme Court of Missouri followed the dissent rather than the holding and the opinion of the majority of the Supreme Court of the United States in *Amalgamated*.

The premises of the *Amalgamated* decision demonstrate that its authority may not be dissipated in the manner

attempted by the court below. Reaffirming *United Auto Workers* v. *O'Brien*, 339 U. S. 454, this Court held that Congress had guaranteed and protected the right of employees to strike in connection with disputes over wages, hours and working conditions; that it had itself imposed upon that right the only "qualifications and regulations" which it deemed desirable, and that Congress had thereby closed the door to concurrent or supplemental regulation of such strikes. 340 U. S. 383, 389-390. The Court held that Congress did not open the door to state regulation where the strike involved "a local public utility." 340 U. S. 383, 391-392. It pointed out that Congress "drew no * * * distinction" between privately owned public utilities and other kinds of business enterprises, and that none "has been drawn in the administration of the Federal Act." 340 U. S., at 392. The Court found that the absence of such distinction was deliberate: "when separate treatment for public utilities was urged upon Congress in 1947, the suggested differentiation was expressly rejected." *Ibid.*

The rejected proposals referred to by the Court, 340 U. S., at 392, note 15, show that they were predicated on the theory that the rates of a public utility are "fixed by some governmental agency" and that strikes in public utilities cause disruption of "essential public service." Indeed, the explanatory statement of Senator Taft, quoted in full at footnote 21 of the opinion, 340 U. S., at 395, shows that Congress believed it necessary to the preservation of a free economy and free collective bargaining to recognize the right to strike for improvement of wages, hours and working conditions in public utilities, exactly as in other basic industries, "in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right." He observed that if the right to strike is modified in the

case of public utilities, "it will be said that coal and steel are just as important as public utilities. I do not know where we could draw the line. So far as the bill is concerned, we have proceeded on the theory that there is a right to strike and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours and working conditions after proper opportunity for mediation."

Finally, the Court in *Amalgamated* rejected the contention that Congress intended "to carve out a separate field of 'emergency' labor disputes;" that it occupied only a portion of that field by adopting "special procedures to deal with strikes which might create national emergencies"; and that it left the balance of that field—strikes which might create "local emergencies"—to the states. The Court held (340 U. S., at 393-394): "congressional imposition of certain restrictions on petitioners' right to strike far from supporting the Wisconsin Act, shows that Congress has closed to state regulation the field of peaceful strikes in industries affecting commerce. * * * And where, as here, the state seeks to deny entirely a federally guaranteed right which Congress itself restricted only to a limited extent in the case of national emergencies, however serious, it is manifest that the state legislation is in conflict with federal law." The Court pointed out that just as Congress had rejected proposals to limit the right to strike in public utilities, so it had rejected on the merits a proposal that the right to strike be denied in cases of "public emergencies", local or national. 340 U. S., at 394-395, note 20. "This proposal * * * was rejected by Congress as being inconsistent with its policy in respect to enterprises covered by the Federal Act, and not because of any desire to leave the states free to adopt it."

The dissent in *Amalgamated* described the decision as invalidating a "State statute aimed at preventing a breach

down of public-utility service" (340 U. S., at 404), and protested its removal "from the orbit of State regulation [of] matters of such intimate concern to a locality as the continued maintenance of services on which the decent life of a modern community rests" (340 U. S. at 403-404).

The decision below is bottomed on the premise that employees of a public utility owe a duty to remain at work to enable their employer to render service to the public, a duty which employees of other kinds of enterprises do not have, and that whatever "right" public utility employees may have to strike is subordinate to that duty (R. 348-349, 352, 353, 356). That is the very argument which was advanced by the dissent in *Amalgamated*, 340 U. S., at 404-405. It is also the same argument on which the State of Tennessee later predicated denial to employees of common carriers of the right to strike and to engage in concerted activities. *Kerrigan Iron Works, Inc.* v. *Cook Truck Lines, Inc.*, 296 S. W. 2d 379 (Tenn., Ct. App., 1956). This Court rejected the argument in *Amalgamated* and reversed the *Kerrigan* case *per curiam*, *Teamsters Union* v. *Kerrigan Iron Works*, 353 U. S. 968.[9]

9. The court below sought to draw support (R. 350) from the decision of the NLRB in *Marshall Car Wheel and Foundry Co.*, 107 NLRB 314, 315. But the inference that NLRB doctrine supports its conclusion is plainly inconsistent with this Court's holding to the contrary in *Amalgamated*, 340 U. S., at 383, n. 14. The obligation imposed on strikers in the *Marshall* case is "to take reasonable precautions to protect the employer's physical plant from such imminent damage as foreseeably would result from their sudden cessation of work." Assuming, *arguendo*, that public utility strikers have a comparable obligation to take reasonable precautions to protect the Company's property and customers from physical damage, not only at the inception but throughout the strike, the steps which the Unions here took (pp. 6-7 *supra*), certainly satisfied any such obligation. In any event, the court below was powerless to pass upon the question whether the steps taken by the Unions to guard against physical damage were so inadequate as to make the strike an unprotected activity. *San Diego Unions* v. *Garmon*, 359 U. S. 236, 244-246.

Closely related, and equally foreclosed, is the argument (R. 344-345, 350, 351) that since states have plenary power to compel public utilities to render services to the public they must be empowered to bar strikes of public utility employees which prevent the utility from rendering such service. That is the very argument upon which the Supreme Court of Wisconsin predicated its decision in the *Amalgamated* case. 340 U. S., at 388, 397.

There is neither novelty nor merit in the contention, advanced below (R. 353), that the states are empowered to outlaw public utility strikes if the purpose of outlawry is to guard the public against interruption of service rather than to regulate labor relations as between the utility and its employees. As this Court pointed out in *Anheuser-Busch*, p. 18, *supra*, and the dissent in *Amalgamated*, pp. 20-21, *supra*, the purpose of the Wisconsin strike prohibition at issue in *Amalgamated* was also to protect the public against interruption of a gas company's service. That did not authorize the state to forbid the exercise of a right which Congress guaranteed. From *Hill* v. *Florida*, 325 U. S. 538, on, this Court has made it clear that where state regulation impinges upon the exercise of a Section 7 right, the regulation must fall even though the interest which the state seeks to serve thereby has nothing to do with labor relations. *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 479-480; *Local 24, International Brotherhood of Teamsters* v. *Oliver*, 358 U. S. 283, 297.

The fact of the matter is, however, as the opinion below shows, that Missouri's outlawry of public utility strikes is predicated upon the view that the strike weapon is not an appropriate or tolerable adjunct of collective bargaining over wages, hours and working conditions in public utilities[10]—which is the very antithesis of Congress' view.

10. "A strike such as this operates chiefly against the public. The utility loses no business because there is nowhere for the

See pp. 19-20, *supra*. Congress regarded preservation of the right to strike as indispensable to the system of free collective bargaining, and it relied on that system to produce agreement on wages, hours and working conditions in public utilities as in all other industries. The court below overlooked the fact that the field of "labor relations" which is preempted by the National Act is not concerned with substantive terms or conditions of employment (cf. R. 349, 352), but rather with the system of free collective bargaining and with the economic weapons to which the parties may lawfully resort in resolving their disputes over terms and conditions of employment under that system. Cf. *Local 24, International Brotherhood of Teamsters, etc. v. Oliver*, 358 U. S. 283, 295. It overlooked also the Missouri legislature's explicit statement, Section 295.010, p. 8, *supra*, that the State Act constitutes a "regulation of the labor relations affecting * * * public utilities," and its provision (Section 295.180(2)) for termination of seizure as soon as the "labor dispute" which evoked it is resolved. The Missouri legislature recognized, as did Congress, that the use of seizure "in order to prevent work stoppages" is a "technique to solve labor disputes." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U. S. 579, 586. Application of Missouri's seizure-no-strike law to utilities subject to the National Act is thus an attempt to override Congress' judgment on the crucial issue of labor relations policy as it affects public utilities and their employees.

On the premises of the *Amalgamated* decision the differences between the Missouri and Wisconsin statutes relied on below (R. 352-353), are immaterial. It is true that Missouri, unlike Wisconsin, does not attempt to substitute

patrons to turn for service. The inevitable result of such a strike is to coerce and intimidate the customers contrary to laws made for their protection." (R. 352).

for collective bargaining compulsory arbitration. But that sharpens rather than mitigates the conflict which results from denial of the right to strike. Congress relied on preservation of the strike weapon to equalize bargaining power and produce voluntary agreement mutually acceptable to both sides. Under compulsory arbitration, the issues in dispute are resolved at least by neutrals, not unilaterally by one of the contestants. Under the Missouri seizure system, outlawry of the strike imposes no pressure on the employer to yield to the employees' demands while it leaves the employees no choice but to work indefinitely on the employer's terms. If Wisconsin's substitute for collective bargaining and voluntary agreement is in conflict with federal policy, *a fortiori*, Missouri's must fall.

Indeed, Congress barred seizure-no-strike schemes just as it barred compulsory arbitration-no-strike schemes. As this Court found in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586, Congress refused to adopt

> the seizure technique to solve labor disputes in order to prevent work stoppages * * *. When the Taft-Hartley Act was under consideration in 1947, Congress rejected an amendment which would have authorized such governmental seizures in cases of emergency [93 Cong. Rec. 3637-3645]. Apparently it was thought that the technique of seizure, like that of compulsory arbitration, would interfere with the process of collective bargaining [93 Cong. Rec. 3835-3836].

Congress rejected seizure as a technique for dealing with strike-created "emergencies", as it rejected compulsory arbitration, on the merits and not "because of any desire to leave the states free to adopt it." *Amalgamated* case, 340 U. S. 383, 395, and note 21.

Nor is it material that in Missouri a strike may be outlawed only after it appears that disruption of service is threatened. Disruption of normal operations is an inevita-

ble concomitant of successful strike action. To allow a strike as long as it is ineffective but to prohibit it when it is effective is to make a mockery of the right to strike. The Wisconsin Act, like Missouri's, illegalized only those utility strikes which "would cause an interruption of an essential service." 340 U. S., at 387. And the Missouri Act, like Wisconsin's, carries the imprint of legislative determination that any interruption of a public utility service resulting from strike action is, *ipso facto*, "a threat to the welfare and health of the people." p. 3, *supra*. That a public utility strike may be lawful and remain so under the Missouri scheme until the Governor makes his investigation and issues his seizure proclamation affords no basis for distinction. A state is no more free to impose "conditions on the right to strike" which illegalize its continuance, than it is to delay exercise of the right for thirty days or "abrogate that right altogether." *Amalgamated* case, 340 U. S., 383, 395-396.

The question is not, as the court below would have it (R. 344, 346, 348), whether the situation created by interruption of a public utility service as a result of strike action may properly be found by state authorities to constitute an "emergency," however that term may be defined. The question is rather whether Congress, by preserving the right of employees of local public utilities to strike, by refusing to exempt local public utilities from the industries in which economic strikes are governed exclusively by federal law, and by refusing to sanction seizure in cases of "emergency," precluded the states from attempting to deal with the conditions flowing from a local public utility strike by illegalizing the strike. This Court answered that question in *Amalgamated* when it rejected the contention "that Congress intended, by silence, to leave the states free to regulate 'local emergency' disputes." 340 U. S. 383, 393-394.

In *San Diego Unions* v. *Garmon*, 359 U. S. 236, 243, this Court noted that in preemption cases "judicial concern has necessarily focused on the nature of the activities which the States have sought to regulate, rather than on the method of regulation adopted." *Amalgamated* was cited as an instance in which "the exercise of state power over a particular area of activity threatened interference with the clearly indicated [national] policy of industrial relations • • •." Ibid., and note 1. This Court reiterated that when the activities which a state purports to regulate are protected by Section 7 "due regard for the federal enactment requires that state jurisdiction must yield," regardless of the nature or objectives of the state policy, and "of the mode [of regulation] adopted." 359 U. S., at 244.

The Supreme Court of Missouri has squarely held, *Rider* v. *Julian*, 365 Mo. 313, 282 S. W. 2d 484, 492-496, cf. *State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 819, 244 S. W. 2d 75, 84, and the facts of this case make plain (R. 182, 264-266, pp. 8-9, *supra*), that seizure under the King-Thompson Act does not have the effect of transforming a utility's employees into employees of the State of Missouri or making the State their employer. Seizure of the type here involved, "token seizure" as the Governor's agent called it, p. 8, *supra*, does not even arguably alter the preemptive applicability of the National Act. Cf. Title 56, Chapter 17, Code of Virginia, Chapter 696, Acts of Assembly 1952, §§ 56-509–56-528. Accordingly, there is no occasion here to consider the effect of a contention that a state may, without offending the National Act, through exercise of its power of eminent domain, become the actual owner and operator of a utility, and hence an "employer" exempt by virtue of Sections 2(2) and 2(3) of the National

Act from its limitations. Cf., however, *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586, and *Local 24, etc.* v. *Oliver*, 358 U. S. 283.

B. The 86th Congress Rejected a Proposal to Overrule Amalgamated and Adopted an Amendment Which Reaffirms Preclusion of State Power to Curtail or Impair the Right of Public Utility Employees to Strike.

In the course of debate in the Senate on S. 1555, the bill which, on September 14, 1959, became law as the Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257, Senator Holland, on April 25, 1959, proposed the following amendment (105 Cong. Rec. 6037):

> (d)(1) Nothing in this Act or the Labor-Management Relations Act, 1947, shall be construed to nullify the provisions of any State or Territorial law which regulate or qualify the right of employees of a public utility to strike, or which prohibit strikes by such employees.
>
> (2) As used in this subsection the term "public utility" means an employer engaged in the business of furnishing water, light, heat, gas, electric power, or passenger transportation services to the public.

Senator Holland pointed out that the purpose of the amendment was to overrule the *Amalgamated* decision, under which the States "are left without any power at all * * * to keep their public utilities running." *Ibid.* He observed that bills to overrule *Amalgamated* had been introduced at every session of Congress since the decision issued, but that none had been reported out of Committee. 105 Cong. Rec. 6039-6040.[11] He criticized the rationale of

11. In fact, in the 85th Congress Senator Holland's amendment was proposed on the floor and voted down. See 104 Cong. Rec. 9980-9995.

the majority opinion and forcefully urged the Senate to adopt the view of the dissent. 105 Cong. Rec. 6037-6042. He described certain strikes in local public utilities, which, he said, had created local emergencies. 105 Cong. Rec. 6038-6039, 6042-6043.

Senator Kennedy, the chairman of the subcommittee in charge of the bill, spoke in opposition. He said (105 Cong. Rec. 6043):

> • • • This is an extremely complicated subject. Many of the examples cited by the Senator caused great inconvenience to the people of the areas involved, but in my opinion they are not comparable to the difficulties which the Nation would face by reason of a major disruption of service in an industry essential to the economy of the country. Yet Taft-Hartley Act did not provide that there should be any qualification of the right of employees of public utilities to strike, or that there should be compulsory arbitration of disputes in these industries.
>
> If the carriers do not operate in Jacksonville, that is an inconvenience; but every strike involves inconvenience. • • •

The amendment was voted down 64-27. (105 Cong. Rec. 6044.)

As finally enacted, the relevant provisions of the new Act relating to federal-state jurisdiction are as follows:

> Sec. 701. (a) Section 14 of the National Labor Relations Act, as amended, is amended by adding at the end thereof the following new subsection:
>
> (c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute

over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

The legislative history of the bill which passed the House from which, save for the proviso to Section 14(c)(1), these provisions were derived, makes it clear that their purpose was to reverse the rule of *Guss* v. *Utah Labor Relations Board*, 353 U. S. 1, thus allowing the states to regulate conduct arising out of labor disputes where the NLRB declines to assert its jurisdiction. H. Conf. Rep. No. 1147, 86th Cong. 1st Sess., pp. 36-37; 105 Cong. Rec. 13091, statement of Congressman Griffin, July 27, 1959. The proviso, on the other hand, which was added at the Senate's insistence, assures that labor disputes in all enterprises over which the Board asserted jurisdiction under its policy standards prevailing on August 1, 1959, remain immune from state control. *Ibid.* Among these are virtually all local public utilities. Under the standards in effect on August 1, 1959, of which Congress took cognizance and which it wrote into law, the Board asserts jurisdiction "over all labor disputes involving local public utilities which exert or tend to exert a pronounced impact on commerce." *Sioux Valley Empire Electric Assn.*, 122 NLRB No. 18; see p. 5, n. 3, *supra*.

It seems plain that the 86th Congress approved and reenacted the rule of the *Amalgamated* case—that states may not curtail the right to strike of employees of local public utilities over which the Board asserts jurisdiction. Congress knew that: "Creation of a special classification for public utilities is for Congress, not for this Court * * *."

Amalgamated case, 340 U. S. 383, 392-393. Its rejection of the Holland amendment is a declaration that no special classification is warranted or desired. *Cf. Amalgamated* case, 340 U. S. 383, 394-395. While Congress amended other aspects of the law involving federal-state relationships it chose to leave untouched the rule that federal preemption applies without qualification to public utilities and "local emergency" situations. *National Labor Relations Board* v. *Gullett Gin Co.*, 340 U. S. 361, 365-366. Indeed, in adopting the Board's standards as the touchstone of exclusive federal jurisdiction Congress explicitly applied the preemption doctrine, *inter alia*, to local public utilities. Cf. the dissent in *Amalgamated*, 340 U. S., at 403-404. Now, less than ever, is creation of "a special classification for public utilities" or "local emergency" disputes a job for this Court.

II.

THE DECLARATORY JUDGMENT CASE IS NOT MOOT.

The Missouri Supreme Court correctly held that the case for declaratory judgment, ripe for adjudication when the trial court ruled (*Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 585), was not rendered moot by termination of the strike pursuant to the injunction, subsequent execution of contracts between Laclede and the appellants and consequent relinquishment of the seizure (R. 341-342). As the courts below specifically found (p. 11, *supra*), appellant Locals continued their strike after the seizure began from July 5, through July 13, 1956, in defiance of the Missouri Act's outlawry of such conduct. The Locals and their officers thereby incurred the substantial forfeitures which Missouri is even now seeking to collect (p. 10, *supra*). The employees jeopardized their seniority rights, which remain in doubt. In view of the "possible

liability" for substantial monetary penalties and the potential loss of seniority to which appellants "might be subjected if the legality" of Missouri's outlawry of the strike after seizure "were not determined," it cannot be suggested that the case for determining the constitutionality of the seizure-no-strike provisions is moot. *So. Pacific Co.* v. *Interstate Comm. Comm.*, 219 U. S. 433, 452; *Oklahoma City* v. *Sanders*, 94 F. 2d 323, 325 (C. A. 10); *Textile Workers Union* v. *Lincoln Mills of Ala.*, 353 U. S. 448, 459; *Pollard* v. *United States*, 352 U. S. 354, 357-358; *Amalgamated Ass'n, etc.* v. *Wisconsin Employment Relations Board*, 340 U. S. 416, 417, note 1; *Burrell* v. *Martin*, 232 F. 2d 33, 37-39, and note 16 (C. A. D. C.).

Harris v. *Battle*, 348 U. S. 803, upon which the suggestion of mootness below was predicated, is wholly inapposite. *Harris* was merely a suit to enjoin a potential seizure; the seizure involved there did not outlaw the strike or make its continuation unlawful. It was held in *Harris* that when the labor dispute was settled and the seizure terminated the injunction case became moot. But in the *Harris* case appellants in no way violated the statute. They incurred no potential liability during seizure and none survived its termination. In Virginia, seizure has characteristics and consequences entirely different from those here involved. Unlike Missouri, it is not illegal in Virginia to continue a strike after seizure; neither the Union nor its officers are required in consequence of seizure to call off a strike. Under the Virginia law the State apparently undertakes to operate the seized utility *qua* employer for its own account. Ch. 17, §§ 56-512; 56-518, 56-520, 56-522. The utility's employees are under no obligation to apply for or accept employment by the State and their seniority rights with the utility are unaffected by their refusal to work during seizure, §§ 56-513–56-514. The only restraint

imposed is that after seizure a union may not picket or otherwise attempt to prevent the State from obtaining employees or operating the utility, § 56-517. The constitutionality of such a law, and seizure under it, poses questions quite different from the questi at issue here.

Quite apart from potential surviving liabilities and burdens, where, as here, seizure by the state is "token" rather than in any sense "real," execution of contracts after employees and their bargaining agents have been prohibited from continuing a strike should not render moot the controversy concerning validity of the prohibition and the constitutionality of the statute which authorized it. Settlement of a labor dispute after the right to strike has been denied is not the product of free collective bargaining: it is the fruit of the State's illegal interference with it. Cf. *Franks Bros. Company* v. *National Labor Relations Board*, 321 U. S. 702, 704-705. After the strike was enjoined, the employees and their bargaining agents had no choice but to settle on the employer's terms or work indefinitely under conditions Laclede imposed. Thus, seizure was "bound to result in many present and future damages of such nature as to be difficult if not incapable of measurement." *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 585. Discontinuance of an illegal restraint after its object has been achieved and its perpetuation thereby rendered unnecessary "does not operate to remove a case from the ambit of judicial power." *Walling* v. *Helmerich & Payne, Inc.*, 323 U. S. 37, 43; *United States* v. *Trans-Missouri Freight Association*, 166 U. S. 290, 308-309. Missouri may not escape review by this Court of the constitutionality of its intrusion into the preempted field by making execution of a contract after token seizure the occasion for lifting its strike ban. Cf. *Oklahoma City* v. *Sanders*, 94 F. 2d 323, 325 (C. A. 10); *United States* v. *Rock Royal Co-op.*, 307 U. S. 533, 555-556. To hold otherwise would

allow Missouri to play hide-and-seek with federal supremacy. Cf. *National Labor Relations Board* v. *Mexia Textile Mills, Inc.*, 339 U. S. 563, 568.

In view of the pervasive threat, acknowledged by the court below (R. 341), to invoke seizure in future disputes, termination of the dispute which provoked this seizure could not moot the controversy. *So. Pac. Terminal Co.* v. *Int. Comm. Comm.*, 219 U. S. 498, 514-516; *So. Pacific Co.* v. *Interstate Comm. Comm.*, 219 U. S. 433, 452; *United States* v. *Aluminum Co. of America*, 148 F. 2d 416, 448 (C. A. 2). That threat itself impairs the guarantees of the federal Act in all industries which the Missouri Act encompasses. In these industries the employees and their bargaining agents, contrary to the intention of Congress, cannot formulate and press their collective bargaining demands in the expectation that ultimate resolution will depend upon the outcome of a conflict of economic forces. As International Vice President Joseph Applebaum testified (R. 186, 144), the law "is used as a club over the unions' heads—utility workers—in the course of negotiations." Cf. Rogers' threat to invoke "the seizure provisions" if the Locals did not call off their strike (R. 258, p. 7, *supra*). As to these unions and their members, the effectiveness of strike action measures the imminence of seizure, not collective bargaining success.

The collective bargaining process is stultified in the very manner which led Congress to reject provisions for seizure as being incompatible with its policy. As Senator Taft put it, Congress refused to put into the law "an ultimate resort to • • • seizure" because "We feel that it would interfere with the whole process of collective bargaining. If such a remedy is available as a routine remedy, there will always be pressure to resort to it by whichever party thinks it will receive better treatment through such a process than it would receive in collective bargaining, and

it will back out of bargaining." 93 Cong. Rec. 3836, as quoted in *Amalgamated*, 340 U. S. 383, 395. Missouri's holding out of the prospect of seizure, with its accompanying illegalization of strikes, to privately owned utilities which are subject to federal law, invites them to "back out of bargaining" and plainly "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67; *Hill* v. *Florida*, 325 U. S. 538, 542. The prospect that Missouri will seize and enjoin under the King-Thompson Act, as contemplated by its policy declaration, is itself "a potent method of governing conduct and controlling policy." *San Diego Unions* v. *Garmon*, 359 U. S. 236, 247. Missouri's determination to apply the seizure-no-strike provisions in future disputes involving utilities substantially affecting commerce like Laclede is thus a continuing invasion of the preempted field. As this Court put it in *Garmon*, *ibid.*, at p. 246: "Our concern is with delimiting areas of conduct which must be left free from state regulation if national policy is to be left unhampered." Along as Missouri's threat persists, national policy is frustrated and the case for determining constitutionality of the seizure-no-strike scheme remains ripe for adjudication.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that this Court should hold the seizure-no-strike provisions of the King-Thompson Act unconstitutional and reverse the judgment of the Supreme Court of Missouri.

Respectfully submitted,

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APPENDIX A.

THE KING-THOMPSON ACT, R. S. MO. 1949, CHAPTER 295.

295.010. *Labor relations affecting public utilities—state policy.*—It is hereby declared to be the policy of the state that heat, light, power, sanitation, transportation, communication, and water are life essentials of the people; that the possibility of labor strife in utilities operating under governmental franchise or permit or under governmental ownership and control is a threat to the welfare and health of the people; that utilities so operating are clothed with public interest, and the state's regulation of the labor relations affecting such public utilities is necessary in the public interest.

295.020. *Definitions.*—1. The term "public utility" shall include any person engaged in the business of producing, distributing, selling or otherwise furnishing electric light or power, heat, gas, steam, water, sewer service, transportation excepting railroads, communication, or any one or more of them to the people of Missouri.

2. The term "person" means any individual, firm, copartnership, corporation, municipal corporation, company, association, or joint-stock association; and includes any trustee, receiver, assignee, or personal representative thereof.

3. The term "representative" means any person or persons, labor union, organization, or corporation designated either by a utility or group of utilities or by its or their employees to act or do for them.

4. The term "collective bargaining" shall be understood to embody the philosophy of bargaining by employees through representatives of their own choosing, and shall include the right of representatives of employees' units to be consulted and to bargain upon the exceptional as well as the routine wages, hours, rules, and working conditions.

5. The term "labor dispute" shall involve any controversy between employer and employees as to hours, wages, and working conditions. The fact that employees have amicable relations with their employers shall not preclude the existence of a dispute among them concerning their representative for collective bargaining purposes.

6. The term "employee" shall refer to anyone in the service of another, actually engaged in or connected with the operation of any public utility throughout the state.

7. The term "board" shall mean the state board of mediation.

295.030. *Governor to appoint state board of mediation —members—qualifications—terms—vacancy.*—1. Within thirty days after the effective date of this chapter the governor, by and with the advice and consent of the senate, shall appoint five competent persons to serve as a state board of mediation; two of whom shall be employers of labor, or selected from some association representing employers of labor, and two of whom shall be employees holding membership in some bona fide trade or labor union; the fifth shall be some person who is neither an employee nor an employer of labor and who shall be chairman of said state board of mediation.

2. Two members of said board shall be appointed for one year, two for two years, and one for three years, and all appointments thereafter shall be for three years or until their respective successors are appointed in the manner herein provided.

3. If a vacancy occurs in said Board by death or otherwise, at any time, the governor shall appoint some competent person having the same qualifications as his predecessor to fill the unexpired term.

295.040. *Oath of members—main office—meetings.*—Each member of said board shall, before entering upon the duties of his office, take and subscribe an oath to support the Constitution of the United States and this state and to demean himself faithfully in his office. The main office of the state board of mediation shall be in Jefferson City, but the board may hold meetings at any time or any place in the state whenever the same shall become necessary, and three members of the board shall constitute a quorum for the transaction of business.

295.050. *Duties of chairman.*—The chairman of the board shall devote his full time to his duties and shall have charge of the office of the board. He shall keep all records of the proceedings of the board, and shall supervise the work of the employees of the board, and shall have such other powers and duties as may be conferred, or imposed upon him by the board.

295.060. *Compensation and expenses of board members.* The chairman of the board shall receive a salary of five thousand dollars per annum, payable monthly; each of the other members of the state board of mediation shall receive fifteen dollars per day for the time spent in the performance of their duties. All members shall receive traveling and other expenses incurred in the performance of their duties.

295.070. *Powers and duties of board.*—1. The state board of mediation shall have power to employ and fix the compensation of conciliators and other assistants and to delegate to such assistants such powers as may be necessary to carry out its duties under this chapter. The board

shall by regulation prescribe the methods of procedure before it.

2. The board shall have power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter under investigation by the board. In cases of refusal to obey a subpoena issued by the board the circuit court of Cole county or of any county where the person refusing to obey such subpoena may be found, on application by the board, shall have power to issue an order requiring such person to appear before the board and to testify and produce evidence ordered touching the matter under investigation, and any failure to obey such order shall be punished by the court as a contempt thereof.

295.080. *Labor disputes—action by board.*—1. Upon receipt of notice of any labor dispute between parties subject to this chapter, the board shall require such parties to keep it advised as to the progress of negotiations therein.

2. Upon application of either party to a labor dispute or upon its own motion the board may fix a time and place for a conference between the parties to the dispute and the board or its representative, upon the issues involved in the labor dispute and shall take whatever steps it deems expedient to bring about a settlement of the dispute including assisting in negotiating and drafting a settlement agreement.

3. It shall be the duty of all parties to a labor dispute to respond to the summons of the board for joint or several conferences with it or with its representatives and to continue in such conference until excused by the board or its representative.

295.090. *Labor agreements — renewal.*—All collective bargaining labor agreements hereafter entered into be-

tween the management of a utility and its employees or any craft or class of employees shall be reduced to writing and continue for a period of not less than one year from the date of the expiration of the previous agreement entered into between the management of the utility and its employees or if there has been no such previous agreement then for a period of not less than one year from the date of the actual execution of the agreement. Such agreement shall be presumed to continue in force and effect from year to year after the date fixed for its original termination unless either or both parties thereto inform the other, in writing, of the specific changes desired to be made therein and shall also file a copy of such demands with the state board of mediation, at least sixty days before the original termination date of (*sic*) sixty days before the end of any yearly renewal period, or sixty days before any termination date desired thereafter.

295:100 *Changes in labor agreement — notice.*—1. In the case of all existing labor contracts, agreements or understandings which do not provide for at least a sixty-day notice of desired changes and which contracts, agreements or understandings terminate after seventy days following the effective date of this chapter, the parties thereto shall nevertheless inform, in writing, the other party or parties of any specific changes desired to be made in said contract, agreement or understanding and file a copy of such desired changes with the state board of mediation at least sixty days before the date fixed for the termination of said contract, agreement or understanding.

2. In the case of labor contracts, agreements or understandings terminating within seventy days after this chapter shall become effective, the parties thereto shall forthwith, or not later than ten days after the effective date of this chapter, inform the other party, in writing, of the specific changes desired to be made in said con-

tract, agreement or understanding and promptly file a copy of such demands with the state board of mediation.

295.110. *Changes in employment terms in absence of labor contract.*—Whenever, after the effective date of this chapter, a situation exists in any utility whereby employees are rendering services under terms and conditions which were not at the time this chapter becomes effective and which have not heretofore been the subject of the contract, and said employees desire to effectuate a change in the terms of employment or a utility desires to effectuate a change in said terms of employment then and in that event, it shall be the duty of the party desiring such change, not less than sixty days prior to the desired effective date thereof, to inform the other party in writing of the specific changes so desired in the manner in which they are desired, either by written contract or otherwise and to file a copy of such terms with the state board of mediation.

295.120. *Public hearing, panel — members — powers — hearings.*—1. In the event that management of a utility and the representatives for collective bargaining purposes of any craft or group of employees of such utility shall not have reached and executed a final agreement in writing as to all conditions of employment affecting such employees on or before the termination date of any existing contract, agreement or understanding or any renewal thereof, or unless the parties shall have, before said date, agreed to submit any and all disputes between them to arbitration, the management of such utility and the representatives of such employees shall, within five days after such termination date, each designate, in writing, a person as a public hearing panel member and file such designation with the state board of mediation; the two persons so designated shall choose a third disinterested and impartial person and these three shall compose and act as a panel.

2. The panel shall promptly proceed and within fifteen days following their designation hold and complete public hearings on the specific changes so requested, to the contract, agreement or understanding. Said period of fifteen days may be extended by the mutual written consent of the parties. The panel shall give to each party full notice and opportunity to be heard, but the failure of either party to appear before the panel at the time and place fixed by it shall not deprive the panel of jurisdiction to proceed to a hearing and to make report thereon as herein provided.

295.130. *Appearance in person or by counsel—notice of hearing.*—Parties may be heard either in person or by counsel as they may elect, and the panel shall give due notice of all hearings to the employee or employees or their representatives and the public utility or utilities involved in the labor dispute.

295.140. *Selection of party representatives.*—Representatives for the purposes of this chapter shall be designated by the respective parties without interference, influence or coercion by either party over the designation of representatives by the other. Representatives of employees for the purpose of this chapter need not be persons in the employ of the utility.

295.150 *Report of hearing to governor.*—Within five days after closing such hearings the panel shall file with the governor, in writing, a report setting forth a statement of the controversy, a resumé of the evidence submitted to it and its recommendations based thereon.

295.160 *Appointment of representatives by board when not designated by parties.*—1. In the event either management of the utility involved or the representatives of the employees for collective bargaining purposes shall fail or neglect to designate, as herein provided, such a person to represent it upon the panel or the two so designated shall

fail to agree upon the third member of the panel, within ten days after the date fixed for the termination of such contract, agreement or understanding, or upon failure to file such designations or any of them with the state board of mediation within said ten-day period, the state board of mediation shall appoint such person or persons, selecting in each case a person qualified by previous experience or employment to represent employers, employees or the public as the case may require.

2. Should both management and the representatives of the employees fail or neglect to designate representatives upon said panel within the time herein required, then the state board of mediation shall appoint a panel of three persons, to be selected as follows: one to represent management of the utility, giving the management forty-eight hours to select its preference from a list of five persons submitted by the board to the management before designating such person; one to represent the employees involved, giving their representative forty-eight hours to select their preference from a list of five persons submitted by the board to such representative, before designating such person; and one to act as the impartial third person. Failure on the part of either party to make such selection shall not prevent the board from appointing the members of the panel from the lists submitted.

295.170. *Proceedings not to supersede voluntary arbitration.*—Compulsory arbitration, as provided in this chapter, shall not be effective in disputes where voluntary arbitration is a part of the contract between the disputing parties. In the event that through the voluntary arbitration disputing parties cannot agree, the state board of mediation shall then enforce the compulsory arbitration as provided.

295.180. *Utility strike—power of governor.*—1. Should either the utility or its employees refuse to accept and

abide by the recommendations made pursuant to the provisions of this chapter and as a result thereof the effective operation of a public utility be threatened or interrupted, or should either party in a labor dispute between a utility and its employees, after having given sixty days' notice thereof, or failing to give such notice, engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare, or in the event that neither side has given notice to the other of an intention to seek a change in working conditions, and there occurs a lockout, strike or work stoppage which, in the opinion of the governor, threatens to impair the operation of the utility so as to interfere with the public interest, health and welfare, then and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the state of Missouri in the public interest.

2. Such power and authority may be exercised by the governor through such department or agency of the government as he may designate and may be exercised after his investigation and proclamation that there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, a lockout or other labor disturbance, and that the public interest, health and welfare are jeopardized, and that the exercise of such authority is necessary to insure the operation of such public utility; provided, that whenever such public utility, its plant, equipment or facility has been or is hereafter so taken by reason of a strike, lockout, threatened strike, threatened lockout, work stoppage or slowdown, or other cause, such utility, plant, equipment or facility shall be returned to the owners thereof as soon as practicable after the settlement of said labor dispute, and it shall thereupon be the duty of such utility to continue

the operation of the plant, facility, or equipment in accordance with its franchise and certificate of public convenience and necessity.

295.190. *Governor to prescribe rules and regulations.*— The governor is authorized to prescribe the necessary rules and regulations to carry out the provisions of this chapter.

295.200. *Unlawful acts—penalties—enforcement of provisions.*—1. It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state.

2. It shall be unlawful for any public utility to employ any person or employee who has violated paragraph 1 of this section except that such person or employee may be employed only as a new employee.

3. Any labor organization or labor union which violates paragraph 1 of this section shall forfeit and pay to the state of Missouri for the use of the public school fund of the state, the sum of ten thousand dollars for each day any work stoppage resulting from any strike which it has called, incited, or supported, continues, to be recovered by civil action in the name of the state and against the labor organization or labor union in its commonly used name.

4. Any officer of any labor organization or labor union representing employees of public utilities who participates in calling, inciting or supporting any strike in violation of paragraph 1 of this section shall forfeit and pay to the state of Missouri, for the use of the public school fund of the state, the sum of one thousand dollars to be recovered by civil action in the name of the state and against such officer.

5. Any public utility that engages in a lockout which brings about a work stoppage shall forfeit and pay to the state of Missouri, for the use of the public school fund of the state, the sum of ten thousand dollars for each day of work stoppage caused by such lockout, said amount to be recovered by civil action in the name of the state and against the public utility; provided further, that if, upon any investigation, supported by competent evidence, by the state board of mediation, it shall appear that any public utility has refused to bargain collectively in good faith with its employees over the terms and conditions of employment, said state board of mediation shall certify such record and proceedings to the public service commission, and, upon consideration of the facts in such record and proceedings the public service commission shall find that the evidence justifies such action, it may revoke the certificate of convenience and necessity of such public utility or impose such other conditions upon such public utility as may be provided by law. Any such action by said public service commission shall be subject to review in the courts of this state in the same manner as other orders or decisions of said commission.

6. The courts of this state shall have power to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder.

295.210. *Meaning of law.*—No employee shall be required to render labor or service without his consent; nor shall anything in this chapter be construed to make the quitting of his labor or services by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service without his consent.

APPENDIX B.

THE NATIONAL LABOR RELATIONS ACT, AS AMENDED.

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right

of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

* * * * *

Section 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or

protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

* * * * *

Section 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al.,
Appellants,

vs.

STATE OF MISSOURI,
Appellee.

On Appeal from the Supreme Court of Missouri.

BRIEF FOR APPELLEE.

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IN THE

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OCTOBER TERM, 1959.

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Appellants,

vs.

STATE OF MISSOURI,
Appellee.

On Appeal from the Supreme Court of Missouri.

BRIEF FOR APPELLEE.

OPINION BELOW.

The opinion of the Supreme Court of Missouri, as amended, is reported at 317 S. W. 2d 309.

JURISDICTION.

Appellants rely upon Title 28, United States Code, Section 1257 (2). This Court (R. 375), having postponed further consideration of the question of jurisdiction to the hearing of the case on the merits (359 U. S. 982), the appellee, in accordance with the rules of this Court, discusses the question of jurisdiction as Point I of this brief.

QUESTION PRESENTED.

The appellants, in their statement of the question presented (Brief, p. 2), omit any reference to the fact that the state, under the act here in question, may "take possession" of a "public utility" only after the Governor, upon investigation, has proclaimed "that the public interest, health and welfare are jeopardized and that the exercise of such authority is necessary to insure the operation of such public utility * * *." The appellants also, in their statement of the question presented, refer to the Fourteenth Amendment to the Constitution of the United States, but nowhere in their brief do they rely upon such constitutional provision. Accordingly, the appellee believes that the question presented to this Court, properly stated, is as follows:

> May a statute of the State of Missouri which provides that, in the event of a threatened or actual strike by employees of a public utility, upon proclamation of the Governor of the State to the effect that the operation of the utility is threatened or interrupted so as to jeopardize the public health, interest and safety, the State may seize the facilities of the utility for use and operation by the State in the public interest, and which makes unlawful strikes by employees of the public utility against either the utility or the State after such seizure, be applied to a public utility operating within the State of Missouri and enforced by injunction against striking by the employees and their unions after seizure of the property of the utility by the Governor, although the National Labor Relations Act is applicable to such utility, its employees and their unions, or is the State Act in conflict with the National Labor Relations Act and national policy so that it may not, under Article VI of the Constitution of the United States, be applied in such circumstances?

STATUTES INVOLVED.

The King-Thompson Act (Chapter 295, R. S. Mo. 1949), as set out in Appendix A of the brief for appellants, pages 37-47, is involved. In addition to the provisions of the National Labor Relations Act (61 Stat. 136, 29 U. S. C., Section 141, et seq.), printed in Appendix B of the brief for appellants, pages 48-50, there is specifically involved 29 U. S. C., Section 141 (b), providing as follows:

> "(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest."

STATEMENT.

The statement of the case in the brief for appellants sets out generally the case presented to this Court. Such statement, however, omits any reference to the circumstances existing with respect to the operation of the Laclede Gas Company in the City of St. Louis and St. Louis County at the time of the seizure of that company by the Governor of Missouri on July 5, 1956. Such circumstances are set forth in the opinion of the Missouri Supreme Court (R. 346-348) as follows:

> "The evidence showed that Laclede had approximately 364,000 customers, including domestic, industrial and commercial users. It was the only utility distributing gas in the area. Residential customers used gas for cooking, water heating, refrigeration and space heating. Practically all of the hospitals in the St. Louis area used gas for sterilization, hot water heating, cooking and space heating. Doctors and dentists in the area were also furnished with gas for their office purposes. Large housing projects were also among the company's customers (R. 33-34).
>
> "During the first ten days of the strike, Laclede received in excess of 13,000 service calls concerned principally with complaints that the gas service had failed or that leaks existed in the streets (R. 39). Records of typical cases involving danger to health and safety were put in evidence by the state (Pl. Ex. 6, R. 108, 381; Pl. Ex. 7, R. 108, 382; Pl. Ex. 8, R. 109, 383; Pl. Ex. 9, R. 116, 384; Pl. Ex. 11-13, R. 142, 385-387). The normal number of complaints concerning failure of gas service for such a period was about 100 (R. 39). There was testimony that 'practically all the areas in our county system' (R. 43) had been denied gas service due apparently to the closing of shut-off valves by unauthorized persons. Areas within the city of St. Louis were without gas largely

due to water being injected into the gas mains (R. 45). Shut-off valves were locked in boxes which could be opened only by a special type of key. Certain employees had these keys prior to the strike and there was no way of telling if all of them had been turned in. Some members of fire departments throughout the city and county also had keys to these boxes (R. 44). Instances were discovered by the police where water was injected into the gas mains. In one case, the hose from a water faucet was still connected and water was running into the gas pipe when the police arrived (R. 123-124). Water in the gas system may shut off a customer's gas temporarily in traveling through the pipes to a low point in the system; and, after it has passed, the gas may come back on and escape through an open outlet, thereby creating a dangerous situation (R. 46). Restoring gas service in any section requires the help of a great number of people. If the valve were merely turned on again, gas might escape through an open outlet and create an explosive or otherwise dangerous situation. It is necessary to shut off the gas at every meter, turn the gas back into the system, then turn on the gas for each customer and light the pilots. During the strike the company did not have sufficient employees to restore service once it had been turned off (R. 45).

"There were also reports of gas escaping into the sewer systems and causing gas fires which had to be extinguished (R. 48-49). At one station, wires carrying electric current used for power were disconnected by the unscrewing and removing of three bolts. In trying to discover the trouble, the man in charge of the plant came in contact with the wires and was severely burned. If the electric connection had not been restored in time, the seal of the gas tank would have been broken and the gas in the

holder would have escaped (R. 98). There was also evidence of tampering with the telemetric controls, which are instruments designed to keep the gas pressure at the proper amount in various sections of the distribution system (R. 125). This created a danger in that gas lines might be ruptured by excessive pressure and flames on burning appliances might be dangerously increased (R. 120). Arrangements were made with city and county police to protect the places where these telemetric controls were located, but the police could not furnish twenty-four-hour protection (R. 121). The company also received numerous reports of escaping gas (R. 109). Since natural gas has practically no odor, it was the practice of Laclede and other companies to add an odorant for safety purposes so that leaks could be detected more readily. This odorant, a liquid, was normally available to some of the employees. During the strike a bottle of this odorant was thrown through a window of the Forest Park office of the company (R. 41), and other quantities of it were deposited at various places in the service area to give the impression that there were leaks where none existed (R. 50).

"When the strike began, the unions advertised in the newspapers that they were setting up crews to take care of emergency work and listed telephone numbers for the public to call (R. 222-223). The defendants' evidence was that these crews responded to approximately 150 calls (R. 223).

"While the evidence is not sufficient to show that the defendants were responsible for these acts of sabotage which helped bring on the emergency, it was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the governor issued his proclamation and executive orders."

SUMMARY OF ARGUMENT.

I.

This cause is moot. Conclusion of the strike against Laclede and termination of seizure by the state made the issues involved in the injunction suit moot. The possible recurrence of state seizure in other disputes does not keep this cause alive. There has been no effort to deprive Laclede employees of seniority rights and, therefore, determination of this cause is not called for by that reason. The effect of a determination of this cause upon pending penalty suits does not afford reason to pass upon the constitutional issues presented in this case. Constitutional issues should be determined only of the strictest necessity and the fact that the issues may be determined in the pending actions directly involving them eliminates such necessity here. The argument that existence of the Missouri statute frustrates national policy and, therefore, the Court should determine the cause is identical with the argument advanced in **Harris v. Battle,** 348 U. S. 803, under similar circumstances involving a Virginia statute. The argument was rejected there and should likewise be rejected here. The authorities relied upon by the appellants are not applicable.

II.

The decision of this Court in **Amalgamated Association v. Wisconsin Board,** 340 U. S. 383, does not control this case. The Wisconsin statute is entirely different from the Missouri statute here involved. The Wisconsin statute prohibited altogether strikes by employees of public utilities, whereas, the Missouri statute prohibits strikes only after seizure of a public utility by the governor to avoid jeopardy to the public interest, health and safety. The Missouri statute is not a comprehensive code for the settle-

ment of labor disputes in public utilities, which the Court found the Wisconsin statute to be. The Missouri statute does not embody compulsory arbitration. The proposal for public utilities rejected by Congress and referred to in **Amalgamated** was a denial of the right to strike, together with the substitution of compulsory arbitration for collective bargaining. Such also was the pattern of the scheme referred to by Senator Taft in his remarks and relied upon by the Court in the **Amalgamated** case. The Missouri statute is not in such pattern. The Court found the Wisconsin statute not to be applicable solely to emergency situations, whereas, the Missouri act is.

III.

Chapter 295, R. S. Mo. 1949, is an exercise by the State of Missouri of its historic role of protecting the public interest in the operation of local public utilities. Missouri has regulated public utilities, including gas companies, since 1913. The scheme of regulation has included a requirement that the utility and its employees furnish safe and adequate service to patrons of the utility under penalty of forfeiture, criminal punishment and injunction. Chapter 295 is merely an extension under the police powers of the State of Missouri of that idea to meet modern conditions. As a police regulation in an area of historically local state concern, congressional intention to supersede the state statute must be clearly manifested, particularly where the legislation is, as Chapter 295, is for the protection of the public health and safety.

IV.

The states have not been completely ousted from legislating in the field of labor relations in industries subject to national acts. The states may still legislate when the state legislation does not conflict with the national act,

and this is particularly true where the area of state activity relates to matters of dominant local interest. Chapter 295 does relate to such matters.

V.

The Missouri statute is not in conflict with the national acts. The protection of right to strike under the federal act extends only to "peaceful strikes". Strikes illegal under either state or federal law are not peaceful strikes and are, therefore, not protected activity under federal law. A strike in violation of Missouri law designed to protect the public health and safety is unlawful, not peaceful and unprotected under federal law. The Labor Management Act of 1947 recognizes that parties to a labor dispute have no right to engage in practices which jeopardize the public health, safety or interest, and the Missouri statute is designed for the protection of public health, safety and interest. Any impairment by the Missouri statute of the collective bargaining process protected under federal law arises solely by reason of limitation upon right to strike, but if such limitation affects only unlawful, non-peaceful strikes, the fact that it, to that extent, deprives employees and their unions of such weapon in the collective bargaining process does not render the Missouri statute in conflict with federal law.

VI.

The rejection by the 86th Congress of the Holland Amendment and the previous rejection of similar proposals is of no significance in the determination of the validity of the Missouri statute. Debate upon the Holland Amendment was quite limited, with only one Senator speaking in opposition to it. His remarks show that opposition was not necessarily on the merits of the proposition but, as in the case of previous similar proposals, was

caused by a procedural question involved in the inclusion of the amendment in the bill under consideration. Furthermore, Senator Kennedy, in his argument against the Holland Amendment in the 86th Congress and previously in discussion of similar proposals, argued against the proposal for the reason that state courts have authority to act in cases where the health, safety and basic welfare of the citizens of the state are at stake. This is, in effect, a recognition of the validity of Chapter 295 as a legislative expression of such policy.

ARGUMENT.

I.

This Cause Is Moot.

This cause of action originated on July 9, 1956 (R. 5-19, 340), as a suit to enjoin the continuation of a strike, begun July 1, 1956 (R. 23-24, 34), by members of the appellant unions against the Laclede Gas Company, after the Governor of Missouri had, on July 5, 1956 (R. 17-18), taken possession of the facilities of Laclede for use and operation by the State of Missouri. The appellants' answer in the cause asserted, on numerous grounds, the unconstitutionality of Chapter 295, R. S. Mo., under which the Governor had acted (R. 19-30, 271). They also sought a declaratory judgment that Chapter 295 was unconstitutional for the reasons set out in their answer (R. 271-272).

On July 13, 1956, after a trial, the circuit court enjoined the appellants from continuing to strike against Laclede and the State of Missouri (R. 277).[1]

The employees returned to work July 14, 1956. On August 10, 1956, new labor agreements were signed between Laclede and the appellant unions. The Governor of Missouri terminated the seizure of Laclede October 31, 1956 (R. 341).

The Supreme Court of Missouri, upon appeal of the cause, rejected the suggestion that the settlement of the labor dispute and the termination of the seizure by the

[1] By amended decree, on August 17, 1956, the court, in response to appellants' petition for a declaratory judgment, adjudged Chapter 295 constitutional and valid and further adjudged that striking by appellant unions and their members was unlawful so long as the Governor's proclamation and executive orders of July 5, 1956, remained in effect (R. 294-295).

State of Missouri made the cause moot (R. 341-342). The court declined, however, to consider matters pertaining to the validity of Chapter 295 other than those directly involved in the injunction (R. 344).

Regardless of the conclusion of the Missouri Supreme Court (**Amalgamated Association v. Wisconsin Board**, 340 U. S. 416, 418), appellee submits that, under the decisions of this court, this cause does not now involve a case or controversy within its jurisdiction. The conclusion of the strike and termination of the seizure by the State rendered moot the issues directly involved in the injunction proceeding. **Harris v. Battle**, 348 U. S. 803; **Montgomery Ward and Co., Inc., v. United States**, 326 U. S. 690; **Commercial Cable Company v. Burleson**, 250 U. S. 360. The possibility of recurrence of the allegedly illegal seizure would not prevent the cause from becoming moot. **Commercial Cable Company v. Burleson**, supra.

The alleged threat to the seniority rights of Laclede employees is more imaginary than real. To the present time, more than three years after the strike, no action has been taken to deprive the employees of seniority rights. The mere possibility of penalty or liability does not keep a cause alive when there is no action actually taken or threatened to impose the penalty or liability. **Lewis Publishing Company v. Wyman**, 228 U. S. 610. Furthermore, Section 295.200 (2), which relates to seniority, makes unlawful the action of the utility which re-employs the employees. Laclede, having done so, alone would suffer the consequences of such unlawful act for which incidentally, no punishment is provided.

As for the effect of a determination of this cause upon the pending actions for monetary penalties, all questions pertaining to the validity of the act may be determined in those actions. This court does not determine constitutional questions "in advance of the strictest necessity."

Parker v. Los Angeles, 338 U. S. 327, 333; **Williams v. Simon,** 355 U. S. 49, 57-58. Determination of the constitutionality of the penal provisions of the law is not now a matter of "strictest necessity", particularly since the issue, and others not here presented, is directly involved in the proceedings presently pending in the state courts. Furthermore, although the Missouri Supreme Court took note of the pending penalty actions and based their determination that the case was not moot partially upon such fact, the Missouri court expressly declined to pass upon the appellants' objections to the penalty provisions (R. 356).

The appellants' complaint that the mere existence of the Missouri law frustrates the national policy for determination of labor management problems is the identical argument advanced in the **Battle** case, 348 U. S. 803, where the court found the cause moot. See page 23, Brief for the Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America, AFL-CIO, amicus curiae, in this cause. Such contention is entitled to no greater weight than it received in the **Battle** case.

The decisions of this court cited to support appellants' position that the case is not moot are inapplicable. **Southern Pacific Co. v. Interstate Commerce Commission,** 219 U. S. 433, and **Southern Pacific Terminal Co. v. Interstate Commerce Commission,** 219 U. S. 498, involved short term orders of the Interstate Commerce Commission. Actions involving such orders subsequent to their expiration date have been held not to be moot because the order may affect future rates. Other cases relied upon involve judgments or administrative orders having continuing direct effect upon the rights of parties concerned, such as **Pollard v. United States,** 352 U. S. 354, where the effect of a criminal conviction continued although the sentence imposed had been served. In **Textile Workers Union v. Lincoln Mills,** 353 U. S. 448, the right to previously accrued wage adjustments re-

mained to be determined despite dissolution of the corporate employer. The order in **United States v. Rock Royal Co-op.**, 307 U. S. 533, likewise would have remained enforceable and affect transactions previously concluded.

The reference to **Amalgamated Association v. Wisconsin Board**, 340 U. S. 416, 417, Note 1, is without significance in the present case. The note referred to dealt with the contention that two other causes involving similar issues were moot (**Amalgamated Association v. Wisconsin Board**, 340 U. S. 383). These contentions were answered by the court's pointing out that one case involved a perpetual injunction, not the situation here, and that the other involved the imposition of a fine in contempt proceedings for enforcement of the injunction. Penalties involved in the cases now pending in the state courts are not sought for violation of the injunction but are those imposed by Section 295.200, R. S. Mo.

Youngstown Sheet and Tube Co. v. Sawyer, 343 U. S. 579, is inapposite. The question presented there was whether or not the constitutional issue was ripe for decision, not mootness.

Walling v. Helmerich & Payne, Inc., 323 U. S. 37, and **United States v. Trans-Missouri Freight Association**, 166 U. S. 290, involved voluntary cessation of agreements and practices which governmental authority sought to forbid. Should the court have refused to consider the causes thereafter, the parties proceeded against might have been at liberty to resume the allegedly illegal practices or agreements. The court therefore proceeded to their determination. Here, seizure was terminated by the State of Missouri because the circumstances which gave rise to such seizure, and which were beyond the control of the State of Missouri, ceased to exist. There has been no cessation merely for the purpose of avoiding ultimate judicial determination of the validity of the action.

II.

The Amalgamated Decision Does Not Control This Case.

The Wisconsin Act involved in **Amalgamated Association v. Wisconsin Board**, 340 U. S. 383, bore some superficial similarity to the Missouri Act here involved. However, the two acts are essentially and fundamentally far different. The decision in **Amalgamated**, properly confined to the actual issues there before the court, does not control this case.

There are a number of features of the Wisconsin Act (Wisconsin Statutes, 1949, Sections 111.50-111.63), not present in the Missouri law, which this Court considered particularly objectionable in **Amalgamated**. The Wisconsin statute (Section 111.62), prohibited all strikes by employees of public utilities. This Court took particular note of this prohibition in declaring that Wisconsin sought "to deny entirely a federally guaranteed right" (340 U. S. 394) and that Wisconsin sought "to abrogate that right altogether" (340 U. S. 395-396).

The Missouri statute, on the other hand, makes striking unlawful (Section 295.200, R. S. Mo.), only after the governor has determined that the public health, interest and safety are jeopardized and has seized the property of the utility "for use and operation by the State of Missouri in the public interest" (Section 295.180, R. S. Mo.). The Missouri Supreme Court recognized that until such time the Missouri law does not make striking by public utility employees unlawful (R. 353). Such has been the construction of the Act in its administration. Since the enactment of the King-Thompson Law there have been seven instances of strikes in public utilities in Missouri in which the governor has determined that the public interest, health and safety were threatened and has exercised the power con-

ferred by Section 295.180 to seize the property of the utility involved.[2] There have, however, been sixteen other instances in which strikes have occurred in public utilities in Missouri and in which the governor has made no finding of threat to the public interest, health and safety.[3] In such the state has taken no action to impose penalties upon the unions or employees involved on the theory that the King-Thompson Act was violated by their strike. On the contrary, there having been no proclamation of the governor, the strike was legal under the King-Thompson Act.

In view of the emphasis placed in the **Amalgamated** case by this Court upon the fact that the Wisconsin Act prohibited strikes altogether, the appellee submits that the fact that the Missouri law makes strikes unlawful only in the event of threat to the public health, interest and safety is highly significant.

In **Amalgamated** the Wisconsin statute was described by the court as "a comprehensive code for the settlement of labor disputes between public utility employers and employees" (340 U. S. 393), primarily because it substituted "arbitration upon order of the board for collective bargaining whenever an impasse is reached in the bargaining process" (340 U. S. 388). The Wisconsin statute made the findings of the arbitrators binding upon parties to a labor dispute subject only to the right of judicial review (Section 111.59, Section 111.60).

The Missouri statute is definitely not a "comprehensive code for the settlement of labor disputes". It does not embody compulsory arbitration. **State ex rel. State Board of Mediation v. Pigg**, 362 Mo. 798, 244 S. W. 2d 75, 81.

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[2] Twelve Years Under the King-Thompson Act (published by the Missouri State Board of Mediation, January, 1959), p. 21. See Appendix A to this brief.

[3] Idem., pp. 24-27. See Appendix B to this brief.

The court, in **Amalgamated**, pointed out that the proposal rejected by Congress for public utilities was a denial of the right to strike, together with the substitution of compulsory arbitration in public emergencies, local or national. The court pointed out that such rejected scheme was the "pattern of the Wisconsin Act" (340 U. S. 394-395). Such is, furthermore, the pattern of the scheme described in the remarks of Senator Taft and quoted by the court in **Amalgamated** (340 U. S. 395, Footnote 21), as among the schemes which the committee had rejected. According to the statement of Senator Taft, such plan was rejected because it involved "a process of the government fixing wages" and because, if such process were available, whichever party might feel that it would receive better treatment as a result would not "make a bona fide attempt to settle if it thinks it will receive a better deal under the final arbitration which may be provided". His remarks show quite clearly that the proposal which the Senator was describing as having been rejected by the committee was likewise in the "pattern of the Wisconsin Act".

Subsequent to the decision in the Amalgamated case, Senator Taft indicated that the implications drawn by this Court from his remarks were not in accord with his understanding of Congressional intention. See Report of Hearings before Senate Committee on Labor and Public Welfare on Proposed Revisions of the Labor Management Relations Act of 1947, 83rd Congress, First Session, 1953, Part I, page 284, where Senator Taft stated: "I may say that we never intended any pre-emption of the field. The Supreme Court has gone beyond what we intended." See, also, remarks of Senator Holland in support of his proposed amendment to S3974, 85th Congress, Second Session, 104 Congressional Record 11091, and in support of proposed amendment to Public Law 86-257, 86th Congress, First Session, 105 Congressional Record 6040. Any further

extension of the remarks of Senator Taft would certainly not be justified.

The Missouri statute, not involving compulsory arbitration, is not of the pattern of schemes rejected by Congress. There is nothing to be gathered from the legislative history of the Federal enactments and proposals to show that Congress intended to exclude state action in accordance with the plan embodied in the Missouri statute.

The Court also found in **Amalgamated** actual conflict between the Wisconsin Act and the National Act in two respects relating to collective bargaining. The Wisconsin Act required collective bargaining only until an impasse was reached (Wisconsin Statutes, 1949, §111.52). The federal act required continued collective bargaining even after a strike. 340 U. S. 388, 399. The Missouri statute does not attempt to terminate collective bargaining at any stage of a labor dispute. Under the Missouri Act, even after a strike or seizure, collective bargaining remains the process whereby the dispute must be settled.

The Court, in **Amalgamated**, pointed out that the employer could, under the Wisconsin Act (Wisconsin Statutes, 1949, § 111.58), refuse, in the arbitration procedure, to consider certain union demands which were properly subjects of collective bargaining under federal law. 340 U. S. 399. The Missouri Act in no manner limits the subjects of collective bargaining between the parties to a labor dispute. Thus, these two examples of express conflict between the Wisconsin Act and the federal acts, which the Court found objectionable in **Amalgamated**, can not be found under the Missouri statute.

Perhaps the most significant distinction between the Wisconsin statute and the Missouri Act is that the Wisconsin statute was not exclusively an emergency measure, whereas, the Missouri Act is. Concededly the court in **Amalgamated** used language which might be taken to

exclude the states from acting as a result of strikes in public utilities even in emergency situations. However, the question actually decided in that case was that a state law, not limited to local emergencies, could not absolutely prohibit strikes in public utilities subject to the Federal acts, and substitute compulsory arbitration for collective bargaining. The court clearly found the Wisconsin statute not to be "emergency legislation" (340 U. S. 393). Since such was the nature of the statute before it, any declarations in **Amalgamated** which purport to invalidate actual emergency state legislation are purely dictum. See Comment, 49 Mich. Law Rev. 1077, 1079 (1951); also Annotation, 22 A. L. R. 2d 894, 896.

The Missouri statute is, of course, actual emergency legislation insofar as limitation upon strikes is concerned. The Missouri Supreme Court characterized the Act as "strictly emergency legislation", * * * "justified under the police powers". "The purpose of the act is to protect * * * citizens against disaster" (R. 353). The emergency characteristics of the seizure provisions of the Missouri Act are illustrated by the actual operation of the Act. As above pointed out, the provisions of the Missouri Act have been invoked on seven occasions.[4] On the other hand, there have been sixteen strikes[5] in public utilities in which there has been no seizure or attempt to invoke the penal provisions of the Missouri Act because the situation did not call for emergency action.

The right and obligation of a state to protect the health and safety of its citizens in emergency situations have repeatedly been recognized. Among situations where emergency state action has been upheld are the so-called "clear and present danger" cases where it has been recognized

[4] Footnote 2, supra. See Appendix A to this brief.

[5] Footnote 3, supra. See Appendix B to this brief.

that state action may be permitted in such circumstances although the restriction involved might otherwise infringe upon constitutionally protected rights. **Feiner v. New York,** 340 U. S. 315, 320; **Cantwell v. Connecticut,** 310 U. S. 296, 308.

Emergency state legislation has been upheld although in the absence of emergency the legislation might well have infringed federal constitutional provisions, such as the contract clause. **Home Building and Loan Assn. v. Blaisdell,** 290 U. S. 398; **Levy Leasing Co. v. Siegel,** 285 U. S. 242; **Veix v. Sixth Ward Savings and Loan Assn.,** 310 U. S. 32.

Certainly the state's authority should not be thwarted and fulfillment of its obligation to protect its citizens in emergency situations must not be precluded because the threat to the citizens arises in a labor dispute. The so-called "right" to strike has never been equated to any constitutional guaranty. **Dorchy v. Kansas,** 272 U. S. 306, 311. The appellant's position, if sustained, would elevate such activity above constitutionally protected rights. Furthermore, the very act of Congress, which is relied upon as the basis of the "right" here claimed, shows that it is subject to limitations. Labor Management Relations Act, 1947, § 13, 29 U. S. C. § 163; **International Union v. Wisconsin Board,** 336 U. S. 257, 260. One limitation must be that in situations of imminent danger to the health and safety of a large portion of the population, the public interest must prevail. **Stapleton v. Mitchell,** 60 Fed. Supp. 51, 61.

As emergency legislation, the Missouri statute stands on a far different footing from the Wisconsin statute involved in the Amalgamated case. That fact, together with the other substantial differences between the Missouri statute and the Wisconsin act, removes the Missouri law from the scope of the **Amalgamated** decision.

III.

Chapter 295, R. S. Mo. 1949, Is an Exercise by the State of Missouri of Its Police Power in Accordance With Its Historic Policy of Protection of the Public Interest in Operation of Public Utilities.

Regulation of the operation of public utilities in Missouri stems from the Public Service Commission Act adopted in 1913 (Laws of Missouri 1913, pages 556-651, now Chapters 386-393, R. S. Mo. 1949). Section 68 of the original Act (Laws of Missouri 1913, page 602, now Section 393.130, R. S. Mo. 1949) required gas corporations to "furnish and provide such services, instrumentalities and facilities as shall be safe and adequate * * *." The obligation so imposed was upon both the utility and its employees. Section 116 of the original Act (Laws of Missouri 1913, page 645, now Section 386.310, R. S. Mo. 1949) authorized the Public Service Commission to require a public utility to maintain and operate its plant in such manner as to promote and safeguard the health and safety of the public. Section 83, Laws of Missouri 1913, page 619 (now Section 386.570, R. S. Mo. 1949), required the employees of gas corporations to obey orders of the Commission under penalty of monetary forfeiture. Failure on the part of employees to obey an order of the Public Service Commission was also made punishable as a misdemeanor (Section 131, Laws of Missouri 1913, page 649, now Section 386.580, R. S. Mo. 1949). The Commission was specifically empowered to cause its general counsel to obtain enforcement of its orders against gas companies and other public utilities by injunction or mandamus (Section 84, Laws of Missouri 1913, page 619, now Section 386.360, R. S. Mo. 1949).

The authority of a state over public utilities includes the authority to require the utility to furnish service to the

public. **New York and Queens Gas Company v. McCall**, 245 U. S. 345. Under the Missouri scheme of public utility regulation, the Public Service Commission would have had, prior to the enactment of Chapter 295, authority to require a public utility to furnish service and to enforce the order by way of injunction against employees who prevented its fulfillment. Thus, the concept that employees of the utility as well as the utility itself owe to the public the duty to furnish services, as embodied in Chapter 295, is nothing new. See 35 Am Jur., Master and Servant, Section 82, page 514. Enforcement of such obligation on the part of the employees by forfeitures, criminal prosecution and injunction has long been a part of the regulatory scheme of the State of Missouri. With the growth in public utility service subsequent to the original enactment of the Public Service Commission Law, the ever broadening reliance by the public upon such service, and the far more frequent threats to continued service of utilities by reason of labor disputes, the somewhat cumbersome procedure under the Public Service Commission Act was deemed inadequate to meet emergency situations which interruption of utility service might produce. The State of Missouri, as the repository of ultimate responsibility for the protection of the health and welfare of its citizens (**House v. Mayes**, 219 U. S. 270, 282), saw fit to draw upon the scheme of Chapter 295 for their protection.

The legislative background of the act here under consideration is significant, not to show that, because this legislation relates to public utilities, it is entitled to special consideration from the standpoint of its validity under the present attack, but to demonstrate that the primary basis of the statute involved and predecessor statutory provisions, was genuinely the protection of the public interest, not state intervention in labor-management relations on behalf of one of the parties to a labor dispute. The history shows clearly that the statute "was addressed to a legiti-

mate end, that is, the legislation was not for the mere advantage of particular individuals but for the protection of a basic interest of society." Home Building and Loan Assn. v. Blaisdell, 290 U. S. 445.

The protection of the important public interest in the operation of public utilities has been historically a matter primarily of state concern. State legislation in such area is generally referable to the police power. **Atlantic Coast Line v. North Carolina Corporation Commission,** 206 U. S. 1. The Missouri Supreme Court properly found Chapter 295 to be a police power measure (R. 363).

This Court has repeatedly held that state legislation enacted in the exercise of the police power should not be held to be abrogated by congressional enactment in the absence of clearly manifest congressional intention to supersede the state legislation. **MK&T Railway Company v. Haber,** 169 U. S. 613, 623; **Reid v. Colorado,** 187 U. S. 137, 148; **Crossman v. Lurman,** 192 U. S. 189, 199-200; **Savage v. Jones,** 225 U. S. 501, 533; **Atlantic Coast Line v. Georgia,** 234 U. S. 280, 294; **MK&T Railway Company v. Harris,** 234 U. S. 412, 418-419; **Carey v. South Dakota,** 250 U. S. 118, 122; **Mintz v. Baldwin,** 289 U. S. 356, 360; **Kelly v. Washington,** 302 U. S. 1, 10; **H. P. Welch Company v. New Hampshire,** 306 U. S. 79, 85; **Maurer v. Hamilton,** 309 U. S. 598, 614; **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 749; **Southern Pacific Company v. Arizona,** 325 U. S. 761, 766; **International Union v. Wisconsin Board,** 336 U. S. 245, 253; **Schwartz v. Texas,** 344 U. S. 199, 202-203.

In **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 749, the court pointed out that it "will not lightly infer that Congress, by the mere passage of a Federal act, has impaired the traditional sovereignty of the several states * * *" in exercising their "historical powers over such traditionally local matters as public safety and order and the use of the streets and highways".

Chapter 295 is designed to promote public safety and order in the State of Missouri. As above pointed out, it is within the area of regulation which is historically a matter of local state concern. The Congress recognized such local interest in the National Gas Act [52 Stat. 821, 15 U. S. C., Section 717 (b)], by expressly exempting from its operation "local distribution of natural gas or the facilities used for such distribution".

The ultimate object of Chapter 295 is the protection of the health and welfare of the citizens of Missouri. This Court pointed out in **Kelly v. Washington,** 302 U. S. 1, 13, that application of the principle of nonexclusion of state authority "is strongly fortified when the state exercises its power to protect the lives and safety of its people".

In **United Automobile Workers v. Wisconsin Board and Kohler Co.,** 351 U. S. 266, 274, this Court observed: "The states are the natural guardians of the public against violence. It is the local communities that suffer most from the fear and loss occasioned by coercion and destruction. We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect".

The State of Missouri is the natural guardian of the health and safety of its citizens. To deny the State of Missouri the right to exercise its traditional authority in the fulfillment of its obligation to protect its citizens in emergencies would deny the State of Missouri its fundamental sovereign authority.

IV.

The Fact That the Missouri Statute Involves Labor Relations Does Not, by Reason of That Fact, Render It Inoperative.

In numerous recent cases this Court has upheld state jurisdiction for the protection of the public safety and wel-

fare in essentially local situations, although the activity sought to be prohibited or punished arose out of a labor dispute in industry subject to Federal labor statutes. **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740; **International Union v. Wisconsin Board,** 336 U. S. 245; **United Automobile Workers v. Wisconsin Board and Kohler Co.,** 351 U. S. 266. See also **Algoma Plywood and Veneer Co. v. Wisconsin Board,** 336 U. S. 301; **United Construction Workers v. Laburnum Construction Corp.,** 347 U. S. 656; **United Automobile Workers v. Russell,** 356 U. S. 634; **Machinists Association v. Gonzales,** 356 U. S. 617; **Youngdahl v. Rainfair, Inc.,** 355 U. S. 131.

Even in cases in which this Court has found state authority to have been superseded by Federal legislation, the Court has carefully pointed out that state authority in the area of labor relations in industries involved in commerce has not been wholly abrogated. **Garner v. Teamsters Union,** 346 U. S. 485, 488; **Weber et al. v. Anheuser-Busch, Inc.,** 348 U. S. 468, 480; **Amalgamated Clothing Workers v. Richman Brothers,** 348 U. S. 511, 519; **San Diego Building Trades v. Garmon,** 359 U. S. 236, ... In the latter case the court observed:

> "* * * However, due regard for the presuppositions of our embracing federal system, including the principle of diffusion of power not as a matter of doctrinaire localism but as a promoter of democracy, has required us not to find withdrawal from the States of power to regulate where the activity regulated was a merely peripheral concern of the Labor Management Relations Act. See **International Assn. of Machinists v. Gonzales,** 356 U. S. 617. Or where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling congressional direction, we could not infer that Congress had deprived the States of the power to act."

Chapter 295 obviously relates to interests "deeply rooted in local feeling and responsibility". Is there "compelling congressional direction" which ousts the state from its power to act with respect to such interests? There is no express direction to such effect to be found in any congressional act and it must, therefore, be found, if at all, in conflict between the Missouri act and the Federal act or Federal policy as established by congressional act.

V.

There Is No Conflict Between Sections 295.180 and 295.200, R. S. Mo., and the National Labor Acts.

In their brief in this Court, the appellants point to two claimed conflicts between the Missouri statute as applied to Laclede and Federal policy. They contend that it denies the right to strike and curtails the exercise of that right guaranteed under Federal law and that it frustrates the national policy of free collective bargaining.

Throughout this litigation the appellants, in advancing their objection to the Missouri statute on the grounds that it curtails the right to strike guaranteed them under Federal law, have overlooked or attempted to avoid two fundamental facts. The first is that the so-called "right to strike" under Federal law has never been extended to other than peaceful strikes. The second is that the strike against Laclede involved in this litigation, and similar strikes to which the Missouri act applies, was not, in either the legal or popular sense of the term, a peaceful strike.

In the **Amalgamated** case the court, in numerous instances, specifically limited the scope of its decision to "peaceful strikes". 340 U. S. 389, 390, 394, 398. The essence of the Court's holding in **Amalgamated** is to be found in the last reference where the court stated: "It

would be sufficient to state that the Wisconsin act in forbidding peaceful strikes for higher wages in industries covered by the Federal act has forbidden the exercise of rights protected by Section 7 of the Federal act." That not all strikes but only "peaceful strikes" are protected activities under the Federal act is clear from the decisions of this Court. The decisions also make clear that the term "peaceful" is employed in this connection as synonymous with the term "lawful". Thus a strike in violation of Federal mutiny laws is not a protected activity. **Southern Steamship Co. v. National Labor Relations Board,** 316 U. S. 31. A sit-down strike, illegal under state law, is not a Federally protected activity. **National Labor Relations Board v. Fansteel Metal Corp.,** 306 U. S. 240, 252. Intermittent work stoppages, prohibited under state law, likewise were not protected activity under Section 7 of the Federal Act. **International Union v. Wisconsin Board,** 336 U. S. 245, 258-265. Mass picketing and violence arising out of a strike are not Federally protected activities and are subject to state interdiction. **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 748-749. **United Automobile Workers v. Wisconsin Board,** 351 U. S. 266, 274-275.

The denial of Federal protection of such activities is dictated by the policy of the national act. Section 1 (b) of the Labor Management Relations Act, 1947, 29 U. S. C., Section 141 (b), declares that employers, employees and labor organizations must "above all, recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety or interest." As the Missouri Supreme Court pointed out, "under law" as here used must have been intended to include state law as well as Federal law "because historically and traditionally the state governments have been vested with the protection of the public health, safety and interest under their general police power" (R. 350). **House v. Mayes,** 219 U. S. 270,

282. Such conclusion on the part of the Missouri Court is amply justified by the cases above cited, for this Court, in determining the unlawful nature of the activity involved, looked to either Federal or state law as the case required. Such conclusion, furthermore, is particularly called for, when the state law is, as the Missouri statute is, legislation for the protection of the public in emergency situations. As pointed out in Point I, supra, emergency situations, although not creating new state power, certainly permits the application of state imposed limitations in circumstances where such might not be otherwise permitted.

Inasmuch as the Federal law demands the parties to labor disputes must recognize that under law neither party has any right to engage in acts or practices which jeopardize the public health, safety or interest it must follow that acts or practices having such effect are unlawful, nonpeaceful and beyond the protection of Federal law. Section 295.180, R. S. Mo. 1949, providing for the seizure of public utilities may be employed only when the chief executive of the State of Missouri has made a determination that the "public interest, health and welfare are jeopardized" and issued his proclamation to that effect. Upon such determination being made, the activity involved no longer is protected under Federal law.

Appellee does not, of course, argue that any violation of state law makes a strike nonpeaceful and unprotected under federal law. Certainly, if the state law is in conflict with an express provision of a federal statute within the domain of federal authority, violation of the state law cannot render the strike unlawful. **United Auto Workers v. O'Brien**, 339 U. S. 454, 458. Where, however, there is no express conflict and the applicable state law is in pursuance of the state's dominant local concern in the protection of the health and safety of its citizens and of their

property in a situation of actual or imminent danger or application of state law is necessary to preserve order, the state statute must remain effective and deprives the activity of lawful and peaceful character, even though it involves a labor dispute. **Allen-Bradley Local v. Wisconsin Board,** 315 U. S. 740, 749; **United Automobile Workers v. Wisconsin Board,** 351 U. S. 266, 274.

The states have not delegated to the federal government the obligation to protect their citizens in local emergency situations. The states retain this obligation and their exercise of authority to fulfill it is a fundamental reason for their existence. "The power and the duty of the state to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents cannot be doubted." **Thornhill v. Alabama,** 310 U. S. 88, 105.

The strike which gave rise to this litigation was not only unlawful and non-peaceful under Chapter 295, R. S. Mo., but it was also unlawful because, as pointed out by the Missouri Supreme Court (R. 346), the statutory requirement that the patrons of Laclede be furnished with "safe and adequate" service, was clearly violated. Section 393.130, R. S. Mo. 1949. Furthermore, the circumstances surrounding the governor's exercise of the authority conferred by Section 295.180, R. S. Mo., which appellants have sought to ignore in their statement of the case, show clearly that in any sense of the term the situation arising as a result of the strike was anything but "peaceful". Disregarding even so-called "mere inconvenience" to patrons arising from disruption of service, there were activities involved which could have had no other motive than to terrorize the public and to endanger the safety of the patrons of Laclede and of the public generally. Such acts as indiscriminate diffusion of gas odorant (R. 41, 50) and tampering with devices which might have caused the

release of large quantities of gas (R. 98) could have been aimed solely at arousing fear in the minds of the public. The injection of water into gas mains (R. 46, 123) and tampering with pressure regulating devices (R. 125) caused grave threats to the safety of patrons of Laclede and the public generally. Such activity can in no sense be characterized as peaceful. **Senn v. Tile Layers Union**, 301 U. S. 468, 479.

The appellants' second ground of conflict, that is, that the Missouri Act frustrates the national policy of settlement of labor disputes by free collective bargaining, is, of course, entirely bound in with their first objection based upon limitation on the "right" to strike. As the Missouri Supreme Court pointed out (R. 343), the Missouri law does not embody a system of compulsory arbitration for the settlement of disputes. The parties are left to their own solution with or without seizure. The complaint of the appellants with regard to interference with collective bargaining must, therefore, be based on the idea that depriving them, after seizure, of the right to strike deprives them of their most powerful weapon in the bargaining process. However, under the Missouri law they may be deprived of that weapon only after its use jeopardizes the public health, interest and safety, and only after such activity becomes unlawful and unprotected by law. The employees have no right to employ illegal, non-peaceful methods in order to enforce their demands in collective bargaining, regardless of the merits of their claims. **National Labor Relations Board v. Fansteel Metal. Corporation**, 306 U. S. 240; **International Union v. Wisconsin Board**, 336 U. S. 245.

The appellee submits that the Missouri law does not conflict with the national act or national policy in either of the respects urged by the appellants.

VI.

The Rejection by the 86th Congress of the Holland Amendment and Previous Rejection of Similar Proposals Is of No Significance in the Determination of the Validity of the Missouri Statute.

The appellee submits that no significance may be attached to the defeat in the 86th Congress of the amendment proposed by Senator Holland to the Labor Management Reporting and Disclosure Act of 1959. Public Law 86-257, 105 Congressional Record 6037.

The debate on Senator Holland's proposal was quite limited. Only Senator Kennedy spoke in opposition to the amendment. His remarks (105 Congressional Record 6043) show clearly that the proposed amendment was subject to procedural objections, in that inclusion of the subject of the proposed amendment in the bill under consideration was undesirable to Senator Kennedy, the manager of the bill on the Senate floor.

Furthermore, it is apparent from the remarks of Senator Kennedy that he considered the Holland amendment to be aimed at permitting state statutes such as that involved in the **Amalgamated** case and that he did not consider the proposal to relate to statutes such as that of Missouri. This is brought out clearly by the remarks of Senator Kennedy (105 Congressional Record 6043) to the effect that the Senate should not accept what was, to him, a measure for compulsory arbitration, "particularly when the courts have the power to act in cases in which the health, safety and basic welfare of the citizens of the state are at stake. The courts have been given by the states the power to seize industries to protect the public health and safety". From these remarks, it is quite obvious that Senator Kennedy argued against the Holland amendment on the specific grounds that the states still had the au-

thority to act in emergency situations to which the King-Thompson Act is exclusively applicable.

Appellee therefore submits that the defeat of the Holland amendment in no wise indicates a Congressional policy contrary to the Missouri statute, but that support for the validity of the Missouri statute may equally well be found in the senatorial action.

Equally without significance is the defeat of a similar proposal offered by Senator Holland to the Labor Management Reporting and Disclosure Act of 1958 (S. 3974, 85th Congress, Second Session, 104 Congressional Record 11090-11101). The debate on that proposal clearly shows that procedural problems figured strongly in the senatorial action. Thus, both Senator Smith of New Jersey (104 Congressional Record 11095) and Senator Ervin (104 Congressional Record 11096) stated that they favored the enactment of a proposal such as the Hollard amendment embodied but both felt it necessary to oppose the proposal as an amendment to the bill then under consideration. Other senators such as Dirksen and Cooper objected to the form of the proposed amendment (104 Congressional Record 11100).

The failure to pass Senate Bill 2650 of the 83rd Congress which contained a similar provision is again of no significance insofar as the validity of the Missouri statute is concerned. Discussion of that measure in the Senate shows that again the Senate's failure to act favorably upon it was related to a large extent to procedural matters, particularly in the handling of the measure by the Committee on Labor and Public Welfare (100 Congressional Record 6193-6202).

Of interest in connection with this proposal is the statement of Senator Kennedy which is quite similar to that made in connection with the proposal at the last session

of Congress. The Senator stated (100 Congressional Record 6110):

> "First. It is not generally realized that the States already have extensive powers to act in emergencies of this sort. The decisions of the Supreme Court make it clear that the State under the Taft-Hartley law retains the authority to exercise its basic police powers, and to protect the public health and safety by all available means consistent with the Taft-Hartley Act, including the seizure of plants, the injunction of violence, the protection of workers crossing picket lines, the operation of facilities by public employees or National Guard men, the prevention of injurious conduct which the N. L. R. B. is powerless to prevent, the prohibition of mass or coercive picketing, and the provision of violence, breaches of peace, trespasses on private property, interference with the public highway, sit-down strikes, mutiny, partial strikes, and even peaceful picketing where other contemporaneous violence stems from the dispute which led to the picketing."

Certainly, the reliance by opponents to the proposals of Senator Holland upon the inherent state power to act in emergency situations deprives any argument against the validity of the Missouri statute based upon congressional rejection of such proposals of any weight. Such fact, coupled with the procedural problems which the proposals encountered, forecloses the placing of any significance upon the congressional action.

CONCLUSION.

The appellee respectfully submits that the cause before this Court is now moot. Should the Court, however, consider the matter on the merits, the appellee respectfully submits that Missouri's King-Thompson Act is a valid

exercise of the authority and obligation of the State of Missouri to its citizens to protect them in emergency situations arising from labor disputes in public utilities. It is not *in conflict* with federal laws and remains valid and enforceable. Appellee respectfully submits that the judgment of the Supreme Court of Missouri should, on the merits of the cause, be affirmed.

Respectfully submitted,

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APPENDIX A.

"Twelve Years Under the King-Thompson Act." Report of the State Board of Mediation (1959), page 21:

Seizure Cases. There have been seven seizure cases in Missouri public utilities since the King-Thompson Act was enacted in 1947, as listed below. Seizure was invoked by the governor in each case after a finding was made by him by proclamation that the public interest, health and welfare were jeopardized by the strike or threatened strike.

Seizure Cases Under the King-Thompson Act.

No.	Year	Case No.	Style of Case	Seizure Started	Seizure Ended
(1)	1950	157	Kansas City Public Service Co. Div. 1287, Amal. Assn. of St., Elec. Rlwy. & Mtr. Coach Emp. of America	4/29/50	12/11/50
(2)	1950	164	St. Louis Public Service Co. Local 788, Amal. Assn. of St., Elec. Rlwy. & Mfr. Coach Emp. of America	8/10/50	10/19/50
(3)	1955	560	St. Louis Public Service Co. Div. 788, Amal. Assn. of St., Elec. Rlwy. & Mtr. Coach Emp. of America	10/11/55	11/23/55
(4)	1956	645	Laclede Gas Company. Local 8-194, Oil, Chemical & Atomic Workers Int'l Union	7/ 5/56 4 p. m.	10/31/56
		646	Laclede Gas Company Local 8-6, Oil Chemical & Atomic Workers Int'l Union		
		647	Laclede Gas Company Local 8-169, Oil, Chemical & Atomic Workers Int'l Union		
(5)	1956	650	Kansas City Power and Light Co. Local 412, IBEW	7/ 6/56	7/17/56
		651	Kansas City Power and Light Co. Local 1464, IBEW		
		652	Kansas City Power and Light Co. Local 1613, IBEW		
(6)	1957	708	Kansas City Power and Light Co. Local 1464, IBEW	8/31/57	6/25/58
		709	Kansas City Power and Light Co. Local 412, IBEW		
		710	Kansas City Power and Light Co. Local 1613, IBEW		
(7)	1957	737	Kansas City Public Service Co. Div. 1287, Amal. Assn. of St., Elec. Rlwy. & Mtr. Coach Emp. of America	11/ 6/57	3/ 6/58

APPENDIX B.

"Twelve Years Under the King-Thompson Act." Report of the State Board of Mediation (1959), pages 24-27:

The complete list of sixteen **Non-seizure Strikes** under the King-Thompson Act follows, the last one being on Union Electric Company property on August 11-12, 1958:

Non-Seizure Cases Under the King-Thompson Act.

No.	Year	Case No.	Style of Case and Strike Data	Strike Started	Strike Ended
(1)	1948	24	Associated Highway Carriers, In. Local No. 41—Int'l Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Kansas City)	3/ 8/48	3/14/48
			On March 8, 1948, the employees left their jobs and remained on strike until a new contract was agreed upon on March 14, 1948. (Board Minutes of March 26, 1948, pp. 20 & 21)		
(2)	1952	267	Southwestern Bell Telephone Co. Communications Workers of America, Division 20	3/ 6/52	3/10/52
			On March 6, 1952, employees at St. Louis went on strike which erupted over the refusal of four St. Louis linemen to work in the rain. After several meetings of the company and union with Federal mediators and Mr. Rogers they were able to end the strike on March 10, 1952. (Board Minutes of March 17, 1952, p. 177)		
(3)	1952	280	Capital City Telephone Company Local No. 2, IBEW	3/28/52	4/ 2/52
			On March 28, 1952, twenty employees engaged in a walkout. There were no picket lines, therefore, there was no interruption of services. The main dispute concerned seniority rights. With the assistance of the State Board of Mediation the company and union were successful in ending the strike on April 2, 1952. (Board Minutes of April 1, 1952, p. 179)		
(4)	1952	367	Motor Carriers Council of St. Louis Local 600, District 9, Teamsters, Chauffeurs', Warehousemen & Helpers of America (St. Louis)	6/30/52	8/ 2/52
			On June 30, 1952, 2,700 AFL truck drivers went on strike paralizing freight movement in and out of St. Louis. After 32 days the strike was settled in Mayor Darst's office on August 1, 1952. This Board left the dispute with the parties and local officials. (Board Minutes of August 18, 1952, p. 191)		
(5)	1952	293	Grundy Electric Coop., Inc. Local No. 53, IBEW	8/29/52	8/31/52
			On August 29, 1952, twenty employees "quit" their jobs. The company accepted their resignations. After several meetings of the company and union the strike was ended on August 31, 1952. The Board Chairman assisted in mediation. (Board Minutes of September 8, 1952, p. 194)		

No.	Year	Case No.	Style of Case and Strike Data	Strike Started	Strike Ended
(6)	1953	418	Capital City Telephone Company Jefferson City Local 2, IBEW	2/27/53	4/ 2/53

On February 27, 1953, twenty-two maintenance men walked off their jobs. The issue in dispute being seniority rights. After conferences with the State Board of Mediation the union and company were successful in reaching an agreement on April 2, 1953. (Board Minutes, 1953, p. 216)

(7)	1953		Laclede Gas Company Local 8-109, Oil, Chemical & Atomic Workers International Union	3/23/53	3/24/53

On March 24 Mr. Rogers received a call from the Federal Mediation and Conciliation Service, St. Louis, reporting "wildcat" strike precipitated by dispute over transfer of foreman from one work assignment to another, allegedly in violation of contract agreement. Locals 8-6, 8-194, walked out in sympathy with the foremen union. Mr. Rogers conferred with President Otto by telephone. Agreement reached to submit the dispute to arbitration. Strike ended then. (Board minutes April 20, 1953, p. 221)

(8)	1953	432	St. Louis Public Service Company Div. 788—Amal. Assn. of St., Elec. Rlwy & Mtr. Coach Employees	7/ 1/53	7/ 2/53

At midnight June 30, 1953, an unauthorized strike of bus and streetcar operators began. The employees were dissatisfied because a new contract covering wages had not been negotiated at the expiration of the old contract. Mr. Rogers and other board members promptly called for conferences with the parties. At 4:00 p. m. on July 2 nearly 500 buses and nearly 300 streetcars returned to services. By 8:00 a. m. on the morning of July 3, service was rapidly approaching normal, thus ending a two-day "wildcat" strike. (Board Minutes of August 25, 1953, pp. 230-231)

(9)	1953	451	Southwestern Bell Telephone Company Communications Workers of America	8/20/53	8/21/53

At 6:00 a. m. on August 20 a general strike in a six-state area of 53,000 CWA members went on strike and placed pickets around Missouri exchanges. Wages and other issues were unsettled. After several unsuccessful meetings of the union and company with the Federal mediators and Mr. Rogers, Governor Donnelly issued a statement demanding the strike be ended in 48 hours. At the deadline, the parties were reviewing and confirming all agreements reached since negotiations began. With this hopeful sign Mr. Rogers advised Governor Donnelly to withhold further action until the morning of August 31. Between 6:00 p. m. August 30 and 7:00 a. m. August 31 the parties resolved all differences and signed a "settlement agreement." The strike was ended after eleven days. (Board file 1953)

No.	Year	Case No.	Style of Case and Strike Data	Strike Started	Strike Ended
(10)	1953	359	Kansas City Power & Light Company Local 1464, IBEW	9/18/53	9/22/53

On September 18, 1953 a "wildcat" strike of approximately 500 employees was started by 140 linemen over a neglect to follow safety rules in repairing one of the lines. After several mediation conferences with Mr. Rogers, the union and company were successful in reaching a settlement on September 22 1953. (Board Minutes of October 26, 1953, pp. 239 & 240)

(11)	1954	505	Transcontinental Bus System, Inc. Continental Central Lines Brotherhood of Railroad Trainmen	7/ 5/54	10/ 7/54

On July 5, 1954, approximately 300 bus operators went on strike. After calling several meetings of the parties in Kansas City in September, the Board was successful in helping them reach a settlement on October 7, 1954. The bus operators had been on strike 87 days. (Board Minutes of August 30, 1954, pp. 35, 36 & 37)

(12)	1954	511	Kansas City Power & Light Company Local 1613, IBEW (Clerical Employees)	7/22/54	7/22/54

At 7:00 a. m. on July 22, 1954, Local 1613 struck the Company. Picket lines were put up which Locals 1464 (maintenance employees) and 412 (power plant employees) declined to cross. In midmorning July 22 Governor Donnelly appealed to Local 1613 to remove the picket lines and go back to work. Mr. Rogers succeeded in arranging a meeting between Mr. Frank Jacobs and Mr. Harry Munsell and negotiating committees late in the afternoon of July 22. The twelve-hour strike was ended immediately. There was no interruption of utility service to the public. (Board Minutes July 21, 1954, p. 28).

(13)	1955	563	Missouri Water Company District 50, UMWA	3/23/55	3/25/55

Strike occurred from March 23 to March 25 on account of refusal of agreement to lay heavy water pipes in trenches by hand instead of by hoisting machines. Settlement was made by Mr. Rogers and the men all returned to work without loss of seniority. (Board 1955 file)

(14)	1955	516	Laclede Gas Company Local 8-6, Oil, Chemical & Atomic Workers	5/13/55	5/15/55

On May 13, 1955, approximately 2,000 employees went on "wildcat" strike. It started about overtime the meter readers claimed when they worked during a recent heavy rain. After a meeting of the company representatives, the CIO Oil, Chemical & Atomic Workers Union and the federal conciliators the strike was settled and the pickets were withdrawn immediately. There was no interruption of services. (Board Minutes of May 14, 1955)

No.	Year	Case No.	Style of Case and Strike Data	Strike Started	Strike Ended
(15)	1957	744	Pemiscot-Dunklin Electric Cooperative Hayti Local 702, IBEW	12/21/57	12/21/57
			On December 21, 1957, this strike was caused by a discharge dispute.		
(16)	1958	778	Union Electric Company Local 1439, IBEW	8/11/58	8/12/58
			On August 11, 1958, 1,600 Union Electric Company maintenance and repair men walked off their jobs when the Union representatives turned down a company offer of a 5 per cent wage increase and other benefits similar to offers accepted recently by two unions representing Union Electric Company employees. Picketing was called off by IBEW International officers stating that the workers were ordered to return to their jobs since the International officers felt a more substantial and rational agreement could be reached through negotiations than through a strike.		

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 42

LOCAL NO. 86, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

REPLY BRIEF FOR APPELLANTS.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, ET AL.,

Appellants,

vs.

STATE OF MISSOURI,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

REPLY BRIEF FOR APPELLANTS.

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1. The Constitutional Question Is Not Moot and Should Be Decided in This Case.

Appellee contends (Br. p. 14) that appellants' entry into a contract with Laclede after seizure was "beyond the control of the State of Missouri". But appellee does not deny that Missouri's injunction compelled appellants either to work indefinitely on terms and conditions of employment unilaterally dictated by Laclede, or accept the best collective bargaining contract they could get while their right to strike was being illegally withheld. By choosing the lesser of these two evils, appellants did not waive their right to contest the constitutionality of Missouri's action in

placing them in that dilemma. *Union Pac. R. R. Co.* v. *Pub. Service Comm.*, 248 U. S. 67, 69-70; *Altvater* v. *Freeman*, 319 U. S. 359, 365-366. Missouri cannot be allowed to escape responsibility for the fact that "the circumstances which gave rise to the seizure * * * ceased to exist." (Brief for appellee, p. 14.) "Were it otherwise, as conduct under duress involves a choice, it always would be possible for a State to impose an unconstitutional burden by the threat of penalties worse than it in case of a failure to accept it, and then to declare the acceptance voluntary * * *." *Union Pacific R. R. Co.* v. *Pub. Service Comm., supra.* That the State did not directly order appellants to enter into a contract with Laclede "does not end inquiry into" the "practical effect" of the seizure. *N. A. A. C. P.* v. *Alabama*, 357 U. S. 449, 461. This Court will not overlook that the very object (see our main brief, p. 23), as well as the inevitable consequence, of the Missouri seizure scheme is to compel settlement of labor disputes in public utilities. Since responsibility for the events which resulted in termination of the seizure rests with the State, the case cannot be moot. *So. Pac. Terminal Co.* v. *Int. Comm. Comm.*, 219 U. S. 498, 514.[1]

In any event, it certainly cannot be suggested that to determine now the constitutionality of Missouri's illegalization of appellants' conduct in continuing the strike after seizure would be without practical consequences. Appellee argues (Br. pp. 12-13) that the heavy penalties and liabilities to which appellants subjected themselves by violating

1. The seizure in *Harris* v. *Battle*, 348 U. S. 803, of course, imposed no such oppressive alternatives on the union there involved. Its members were not even required during seizure to work for the State of Virginia, much less to work for a private company on terms unilaterally imposed by it. While it was in that case argued that the threat to invoke the Virginia law in future disputes constituted a continuing barrier to free collective bargaining, it was not contended that settlement of the labor dispute which resulted in termination of the seizure was itself the product of duress operating upon the union as a consequence of seizure.

the Act should be disregarded because Laclede has not yet deprived appellants' members of their seniority rights, and the constitutional question "may" be determined in the pending actions to collect monetary penalties. But loss of seniority is not left to Laclede's discretion. That Laclede has not yet yielded to the Act's compulsion may reflect nothing more than its own doubts of Missouri's constitutional power to illegalize continuation of the strike. As long as Missouri and Laclede give no assurance that in this respect the Act will not be enforced there is "a definite threat to interfere with [possessors] of the menaced rights by a penalty for an act done in violation of the claimed restraint", and there is "no reason why a declaratory judgment action, even though constitutional issues are involved, does not lie". *United Public Workers* v. *Mitchell*, 330 U. S. 75, 92, 93; *Connecticut Mut. Life Ins. Co.* v. *Moore*, 333 U. S. 541, 550; *St. John* v. *Wisconsin Board*, 340 U. S. 411, 414; *Rescue Army* v. *Municipal Court*, 331 U. S. 549, 573, note 41.

A fortiori is that true with respect to the monetary penalties, for those the State is admittedly seeking to collect. *Cf. Alabama State Federation of Labor* v. *McAdory*, 325 U. S. 450, 459-460. Appellee would have this Court delay passing on Missouri's power to illegalize continuation of the strike until the penalty suits reach this Court. But when appellants raised that issue in one of the penalty suits, No. 46,664, appellee asserted that the constitutional question was *res judicata* by virtue of the declaratory judgment in the instant case and the trial court agreed. (R. 318, 331, 333-334.) *Rodney* v. *Gibbs*, 184 Mo. 1, 87 S. W. 187; *Norwood* v. *Norwood*, 353 Mo. 548, 183 S. W. 2d 118; *cf. United States* v. *Mottsingwear, Inc.*, 340 U. S. 36, 38; *Restatement of Judgments*, Sec. 77, Comment b. Appellants' liability for monetary penalties as a result of their admitted violation of the Act is a major factor in establishing that the declaratory judgment case

was and is a live and justiciable case and controversy. Since Article III imposes no bar, disposition of this case depends on decision of the constitutional questions. Their adjudication here is both necessary and appropriate.

In *La Crosse Telephone Corp.* v. *Wisconsin Board*, 336 U. S. 18, 21-24, this Court passed upon the constitutionality of Wisconsin's assertion of power to regulate La Crosse's labor relations on appeal from a mere certification which itself "was not in the form of a command", and despite the fact that the employer could be compelled to bargain with the certified union only through a separate unfair labor practice proceeding. This Court did not postpone adjudication of the constitutional question to the unfair labor practice case despite the clear possibility that the State Board might, on other grounds, decide that case in favor of the employer. 336 U. S., at 23. See also, *St. John* v. *Wisconsin Board*, 340 U. S. 411.

2. The State Court's Finding of "Emergency" Does Not Distinguish This Case from Amalgamated; Virtually Identical Findings Were Made by the Wisconsin Supreme Court in No. 438.

Appellee and its associate amici would distinguish this case from *Amalgamated* on the ground that the Missouri Supreme Court found (R. 346-348) that the strike resulted in a substantial disruption of gas service; that the public interest, health and safety were jeopardized and that an "emergency" existed. (Brief for Laclede, pp. 2-3; Brief for Missouri State Chamber of Commerce, p. 16; Brief for Kansas City Power & Light Company, pp. 10-14; Brief for Chamber of Commerce of Metropolitan St. Louis, pp. 6-10.) They overlook the fact that in the companion case decided in the *Amalgamated* opinion, *United Gas Coke & Chemical Workers of America, etc.* v. *Wisconsin Board*, No. 438, October term, 1950, 340 U. S. 383, 386, the Su-

preme Court of Wisconsin had made almost identical findings.

In the *United Gas* case a union and its officers were held in contempt for ignoring a state court restraining order which required them to call off a strike against the gas company. The strike began at 6:00 a. m., October 5, 1949. In its opinion, the Supreme Court of Wisconsin detailed the consequences (258 Wis. 1, 4, 44 N. W. 2d 547, 549):

> At 11:00 a. m. the public was advised to curtail consumption of gas and an appeal to consumers of gas was made to shut off the service; the steam pressure dropped to zero in the boiler room and no further pumping could be done with the main pumping facilities; the fires had to be pulled from the boilers reducing the steam pressure, and all facilities had to be stopped; a minimum pressure in the distribution system was kept in order that the air would not get into the mains so as to prevent any explosions due to the mixture of gas and air in the distribution system; the send outs dropped to twenty five per cent of what they had been previously. Low pressure in the system created *a dangerous condition fraught with the possibility of infinite injury to the public*. The public was advised by radio broadcasts and through the newspapers to shut off appliances and to shut off the service at the meter. (Emphasis supplied.)

The restraining order was signed at 12:55 p.m., and served at 2:00 p. m. The Wisconsin Supreme Court pointed out (258 Wisc., at 5; 44 N. W. 2d at 549), that the requirement of immediate compliance was embodied in the restraining order "[b]ecause of the seriousness of the situation already referred to resulting from the partial or complete stoppage of the essential service of furnishing gas to the public . . . ." And it predicated state authority to enforce the challenged restraining order (258 Wisc., at 7-9, 11 N. W. 2d at 550-551), squarely on the theory that state power to protect the public health, safety and welfare

in "local emergencies" arising out of public utility strikes was not superseded by the National Act as construed in *United Automobile Workers* v. *O'Brien*, 339 U. S. 454.

This Court, of course, did not upset the Wisconsin Court's finding that an emergency existed or challenge the bona fides of its declaration that the order was issued to protect the public health and safety. It reversed the contempt conviction on the ground that the Wisconsin Act, as applied by the Wisconsin courts in these circumstances, conflicted with national policy. *Cf.* dissenting opinion, 340 U. S. 399, 401, n. 2. To argue, as does appellee, Br. pp. 18-19, that this Court's rejection of Wisconsin's preemption theory was mere "dictum" or, as does amicus Laclede (Br. pp. 17-18, and note 1), that this Court did not decide but rather reserved the question whether Congress left the states power to enjoin public utility strikes which create a local emergency, is not merely to misread this Court's opinion, which, after noting that the Wisconsin Act was not "limited" to "local emergencies", proceeded to dispose of the Act as it applied to them, 340 U. S. 393-394, 397-398, but to disregard the fact that the holding invalidated an *emergency* injunction.

The insistence of appellee (Br. 16-17, 18-19, 20, 30) and amicus Laclede (Br. pp. 17-19, 24, 27, 32) that the Wisconsin Act was struck down because this Court found it a "comprehensive code for the settlement of labor disputes," rather than a measure to safeguard the public against breakdown of utility service flies in the face of this Court's contrary statement. In *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 480, the Court said:

> "In *Amalgamated Association* v. *Wisconsin Employment Relations Board*, *supra*, the statute was directed at the preservation of public utility services and not at maintenance of sound labor relations but the State's injunction was reversed."

Wisconsin's Act was no less predicated on the "emergency" theory than Missouri's is, *i. e.*, the Wisconsin Act too applied only to those strikes which interrupted or threatened to interrupt essential service. 340 U. S., at 387, and note 4. The "declaration of policy" of the Wisconsin Act, Ch. 414, Laws of Wisconsin, 1947, Section 111.50, stated that such interruption "results in damage and injury to the public wholly apart from the effect upon the parties immediately concerned and creates an *emergency* justifying action which adequately protects the general welfare." (Emphasis supplied.) This Court's observation in *Amalgamated*, upon which appellee so heavily relies, that application of the Wisconsin Act was not limited to emergency situations was addressed to the fact that that Act had "been invoked to avert a threatened strike of clerical workers of a utility." 340 U. S., at p. 394, note 19. The same is true, as this case shows, of the Missouri Act, for appellant Local 8-194 is composed entirely of clerical workers (R. 338; 34) and the Missouri Act was here invoked to illegalize their strike.

Appellee's argument (Br. pp. 19-20; Br. for amicus Laclede, pp. 11-19, 21-32), that state outlawry of public utility strikes enjoys a special exemption from preemption if outlawry is accomplished through invocation of the state's power to protect the public health and safety, is incompatible with this Court's determination in *Amalgamated*, 340 U. S. 383, 394-395, note, 397-398, that Congress decided, on balance, to protect the right to strike "in spite of the inconvenience, *and in some cases perhaps danger*, to the people of the United States which may result from the exercise of such right." (Emphasis supplied.) To permit the states to use such inconvenience or danger as a basis for outlawing exercise of the right would allow the

to reverse Congress' judgment[2] in a field in which Congress, being empowered under the commerce clause to legislate, is, by virtue of Article VI, supreme.

3. Unauthorized Acts of Unidentified Third Parties May Not Be Utilized to Transform a Peaceful Strike Into an Unprotected or Unlawful One.

To remove this strike from the preempted and protected category of "peaceful strikes", appellee (Br. pp. 29-30), like the court below (R. 346-348), relies upon evidence that unidentified third parties committed "acts of sabotage" (R. 348). But the court below specifically found that "the evidence is not sufficient to show that the defendants were responsible for these acts" (R. 348), and acknowledged that there was no evidence of "violence traceable to the defendants" (R. 351). For all that appears these acts of violence and sabotage may have been committed by *agents provocateurs*. Under federal law, such conduct by unidentified third parties does not rob a strike of the protection accorded it by Sections 7 and 13; Missouri's reliance upon it is itself in irreconcilable conflict with federal law.

It has long been well established that "proof of individual wrongdoing is a prerequisite" to disqualification of a striker from the National Act's protection and that "absent an agency relationship" neither unions nor employees may "be charged with misconduct committed by others." *Garment Workers* v. *N. L. R. B.*, 237 F. 2d 545, 549-550, 551, 552, and cases collected at footnotes 13 and

2. As Wisconsin frankly put it in its brief to this Court in the *Amalgamated* case, Brief for Respondents in Nos. 329-330, Oct. Term, 1950, p. 17, "the legislature chose to place a higher value upon preventing the inconvenience and danger to the general public resulting from a cessation of essential public utility services than upon the complete freedom of employees to bargain over the terms of employment, with a strike * * * as the employee's alternative to agreeing to terms they consider undesirable."

15; cf. *N. L. R. B.* v. *Local Union No. 1229*, 346 U. S. 464, 474, 475.

Only once has the National Labor Relations Board suggested that a duty may rest on strikers who are not personally guilty of any acts of misconduct to abandon their strike if others engage in acts of violence. In *B. V. D. Company, Inc.*, 110 NLRB 1412, 1413-1416, the Board found that "widespread physical violence, destruction of property, intimidation, and threats * * * accompanied the strike." It found, 110 NLRB, at 1416, that these acts were "all committed in furtherance of the strike * * * by identified or unidentified strikers or pickets or by outsiders who came to the aid of the strikers either on the the express invitation or with the tacit approval of the Union." It held that "Whether or not the strikers expressly authorized such conduct * * * they invited and accepted the benefit of it." The Board concluded that under these circumstances strikers who were not shown to have themselves authorized or participated in the violence were required "by admonishment, denunciation, or public pronouncement" to dissociate themselves from it or else abandon picketing. By remaining silent and continuing to picket, the Board held, the strikers forfeited the protection of the Act and their right to reinstatement with back pay.

The Court of Appeals for the District of Columbia reversed. *Garment Workers* v. *N. L. R. B.*, 237 F. 2d 545, 549, *et seq.* It held that to draw "a conclusion of ratification" from "mere failure to abandon picketing would curtail an important statutory and constitutional right." 237 F. 2d 545, 551. It repudiated the Board's effort to tie the violence to the picketing where "[n]o connection between the two was shown." 237 F. 2d at 552. It ordered the Board to reinstate with back pay the strikers who were not proven to have participated in or au-

thorized the violence. The Board acquiesced in this reversal (*B. V. D. Company, Inc.*, 117 NLRB 1455), and has since adhered strictly to the established rule. See, *e. g.*, *Morris Fishman & Sons, Inc.*, 122 NLRB No. 165, *slip op.* pp. 2-3.

In the instant case not only is there no evidence that any of the defendants participated in or authorized any act of violence or sabotage; the commission of such acts ran entirely counter to the Union's policy, which was to provide continuing protection to the public against hazards which might arise during the course of the strike. (Brief for appellants, note 5, pp. 6-7.) If unauthorized and unidentified third parties could transform appellants' peaceful strike into a "non-peaceful" one the "rights afforded to employees by the Act would be indeed illusory." *Republic Steel Corporation* v. *N. L. R. B.*, 107 F. 2d 472, 479 (C. A. 3).

In *Youngdahl* v. *Rainfair, Inc.*, 355 U. S. 131, this Court held that while, in view of the strikers' past misconduct, the state was empowered to enjoin "future acts of violence, intimidation and threats of violence by the strikers and the union, yet it is equally clear that [the state] court entered the pre-empted domain * * * insofar as it enjoined peaceful picketing * * *." 355 U. S., at 139. It was necessary, said the Court, to distinguish the "picketing proper", which was peaceful, from "the activities around the headquarters," which were not. (*Ibid.*) If a state may not seize upon acts of violence committed by the strikers themselves to illegalize peaceful picketing, *a fortiori* may it not seize upon acts of violence committed by unidentified third parties, not shown to have been authorized by the Union, to illegalize a peaceful strike.

4. Congress Considers Token Seizure-No-Strike Schemes Incompatible With National Policy.

Appellee insists (Br. p. 18) that "The Missouri statute, not involving compulsory arbitration, is not of the pattern of schemes rejected by Congress." But appellee ignores this Court's holding in *Youngstown Sheet & Tube Co.* v. *Sawyer*, 343 U. S. 579, 586, that Congress "refused" to "provide for seizure under any circumstances," and the demonstration in Mr. Justice Burton's concurring opinion, 343 U. S., at 657, that "authority to seize an affected industry" was deliberately omitted because "Collective bargaining, rather than governmental seizure, was to be relied upon." To support this conclusion Mr. Justice Burton set out in footnote 4 of his opinion Senator Taft's famous statement, noting that "Part of this quotation was relied upon by this Court" in the *Amalgamated* case, 340 U. S. 383, 396, note 21.

Appellee also argues (Br. p. 33) that Senator Kennedy's statements in opposition to the Holland amendment show that he does not consider seizure schemes like Missouri's to be barred by the *Amalgamated* decision. The contrary is true. For in the statement quoted by appellee (100 Cong. Rec. 6110) Senator Kennedy pointed out that the only means a state may invoke to protect the public health and safety in emergencies are means "consistent with the Taft-Hartley Act." Seizure, as under the Virginia law, by which a state undertakes to operate a utility on its own account and itself becomes the employer may well be consistent with the Taft-Hartley Act because that Act exempts entirely employment relationships in which a state is the employer. Token seizure, however, by which a state merely prevents employees of a private employer from striking, and requires them to work indefinitely on the employer's terms, is clearly inconsistent with the Act.

Nothing in Senator Kennedy's remarks suggests that he believed that such a seizure scheme is compatible with the *Amalgamated* decision. Indeed, if, apart from federal protection and preemption, the right of private employees to strike is not entirely an illusion, the Missouri seizure-no-strike scheme must be deemed to offend the Fourteenth Amendment as well.

Respectfully submitted,

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No. 42

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*, *Appellants*

vs.

STATE OF MISSOURI, *Appellee*

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

BRIEF FOR THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, AFL-CIO, *AMICUS CURIAE*

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BRIEF FOR THE AMALGAMATED ASSOCIATION OF STREET, ELECTRIC RAILWAY AND MOTOR COACH EMPLOYES OF AMERICA, AFL-CIO, *AMICUS CURIAE*

INTRODUCTORY STATEMENT

The appeal in this case involves a Missouri statute known as the King-Thompson Act (Ch. 295, R.S. Mo. 1949), which provides, *inter alia*, that in the event of a threatened or actual strike by employees of a "public utility" the State may seize the utility and upon such seizure a strike by the employees of the utility becomes unlawful. The question presented is whether the application of this seizure and strike-prohibition statute to a strike involving a privately owned gas company whose operations affect interstate commerce is in conflict with the Constitution of the United States.

This brief *amicus curiae* is filed on behalf of the Amalgamated Association of Street, Electric Railway and Motor Coach Employes of America, AFL-CIO, (hereinafter referred to as the Amalgamated Association) with the consent of the parties in this case. The Amalgamated Association is a labor organization representing employees engaged in the operation and maintenance of buses, streetcars, and similar vehicles used in local and intercity public passenger transportation. The Amalgamated Association is the dominant union in this field in the United States. It represents its membership in collective bargaining through several hundred Local Divisions, including a number whose members comprise the employees of the public transit systems in various cities in Missouri.

Included in the definition of a "public utility" under the King-Thompson Act (Sec. 295.020) is "transportation excepting railroads." As a consequence, collective bargaining by the Local Divisions of the Amalgamated in Missouri has been regulated and affected by the King-Thompson Act, and the membership of those Local Divisions has been subjected to the seizure and strike-ban provisions of that Act. In fact, since the statute in question was first enacted in 1947 the State of Missouri has, pursuant to the Act, seized public utilities where strikes were threatened or in progress on seven occasions. Four of these seven seizures have involved the transit systems in St. Louis and in Kansas City, Missouri, whose employees are represented by Local Divisions of the Amalgamated Association, and whose operations affect interstate commerce.[1] A penalty suit arising out of one of those seizures against the St. Louis Local Division of the Amalgamated Association is still pending.[2]

The Amalgamated Association has been subjected to King-Thompson seizures in the past, and, as the court

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[1] *Twelve Years Under the King-Thompson Act*, (published by the Missouri State Board of Mediation, January, 1959) p. 21. The National Labor Relations Board has asserted jurisdiction over the St. Louis and Kansas City transit systems. See, for example, 71 N.L.R.B. 160, and 47 N.L.R.B. 1.

[2] *Twelve Years Under the King-Thompson Act*, *supra*, p. 22.

below in the instant case recognized, "seizures of utilities in similar situations are likely to occur again." (R. 341) In addition, the Amalgamated respectfully directs the Court's attention to the fact that there are at least fifteen other states which have enacted laws regulating strikes in public utilities and providing for compulsory arbitration and/or seizure. (104 Cong. Rec. 9985-9986) Like Missouri, some of these states have continued to apply those statutes to public utilities whose operations affect interstate commerce, with the result that the employees of those utilities, represented by the Amalgamated Association and other labor organizations, are denied the right to strike and to engage in free collective bargaining that the National Labor Relations Act was intended to guarantee and protect. The issues in the instant case have a direct bearing upon the question of the validity of such statutes as applied to transit systems and other public utilities whose operations affect interstate commerce.

In the light of the foregoing it is clear that the Amalgamated Association has a direct and vital interest in the very important issues before the Court in this case. We submit this brief *amicus curiae* in support of the Appellants. For the reasons set forth hereinafter we urge this Court to reverse the decision of the court below and to hold that the application of the seizure-strike-ban provisions of the King-Thompson Act to a public utility whose operations affect interstate commerce was in violation of Article VI of the Constitution of the United States.

SUMMARY OF THE ARGUMENT

1. The decision in this case is governed by *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U.S. 383. Just as the Wisconsin compulsory arbitration-strike-ban statute was held invalid in that case, so the Missouri seizure-strike-ban statute in this case must be set aside. Both statutes conflict with federal law and federal policy and constitute an intrusion into a field preempted by Congress.

The grounds upon which the court below sought to dis-

tinguish the instant case from the *Amalgamated* decision are wholly untenable. The fact that the Missouri statute was enacted for the purpose of utilizing the State's police power in an effort to avoid "local emergencies" resulting from public utility strikes does not save that statute from fatal conflict with the federal law and policy. The same contention was considered by this Court in the *Amalgamated* case, and, on the basis of the legislative history of the federal Act, specifically rejected. That view was later reaffirmed in *Weber v. Anheuser-Busch*, 348 U.S. 468.

Equally without merit is the attempt to distinguish this case from *Amalgamated* on the basis of differences in the form of the two statutes. The fact that Missouri does not ban public utility strikes entirely, but provides for their prohibition whenever the State elects to declare a "seizure" (including instances in which the "seizure" is instituted before any strike takes place) is a difference that has no real substance. Just as surely as did the Wisconsin law, the Missouri statute makes any strike or attempt to strike by public utility employees meaningless.

Nor can any distinction be drawn from the fact that Missouri provides for seizure instead of compulsory arbitration. Both techniques are equally at war with the federal policy of free collective bargaining. The same legislative history that this Court relied upon to show that Congress had rejected compulsory arbitration as a possible technique for the handling of emergency disputes shows that Congress reached the same conclusion with respect to seizure. Both were rejected on their merits as being inconsistent with the national policy, and neither was left to the States for their use in any labor disputes affecting interstate commerce.

2. The controlling force of the *Amalgamated* decision in this case finds further and conclusive confirmation in the fact that in the years since that decision was announced Congress has on several occasions specifically refused to enact legislation which had as its avowed purpose the overruling of that decision. Such bills have been introduced in almost every session of the Congress since 1951. On two

occasions, in 1958 and in 1959, they have been debated on the floor of the Senate and in each instance they failed of passage. Instead, in the recent Labor Management Reporting and Disclosure Act of 1959, Public Law 86-257, Congress amended the Act so as to permit the States to exercise jurisdiction, but only in those instances where the N.L.R.B. declines jurisdiction, and further provided that the Board may not decline jurisdiction if it would have asserted jurisdiction under the standards in force on August 1, 1959. Under those standards the Board asserts jurisdiction over virtually all local public utilities. The states are thus prohibited from acting to restrict public utility strikes by seizure or any other means. The *Amalgamated* rule has been written into the statute; and the Missouri law here involved must be declared invalid.

3. This case is not moot. Any reliance upon *Harris* v. *Battle*, 348 U.S. 803, upon which the suggestion of mootness by an *amicus curiae* in the court below was based, would be wholly misplaced. Among the many factors which distinguish the instant case from the *Harris* case is the fact that in the *Harris* case the labor dispute which gave rise to the seizure had been settled, and the seizure itself, had been lifted before the initial trial in the matter in the State court. And with the lifting of the seizure no outstanding claims for injury or liability arising out of the seizure remained so far as the record in that case revealed.

ARGUMENT

I—MISSOURI'S REGULATION OF PUBLIC UTILITY STRIKES IS IN CONFLICT WITH FEDERAL LAW AND AN INTRUSION INTO A FIELD FULLY OCCUPIED BY CONGRESS.

To the extent that the King-Thompson Act is utilized, as it was in this case, to prohibit a strike in a public utility affecting interstate commerce it conflicts with federal law and the policy upon which that federal law is based; it intrudes state policy into a field that has been preempted by the federal government; and it is therefore in violation of Article VI of the Constitution of the United States.

That is the clear lesson of the decision of this Court in *Amalgamated Association etc.* v. *Wisconsin Employment Relations Board*, 340 U.S. 383, a decision which is fully dispositive of the question raised by this appeal. In that case a Wisconsin statute which prohibited strikes in certain public utilities and substituted a system of compulsory arbitration was set aside on the ground of federal preemption. In the more than eight years since that decision was announced this Court has made numerous refinements in the doctrine of federal preemption; but the *Amalgamated* decision has lost none of its vitality. It has been cited and reaffirmed by this Court for the basic proposition that a state statute is invalid where it "denied a right which Congress had guaranteed under § 7 of the Taft-Hartley Act — the right to strike peacefully to enforce union demands for wages, hours and working conditions." *Weber* v. *Anheuser-Busch, Inc.*, 348 U.S. 468, 474-475. In the most recent decision of this Court on a question of federal preemption this Court cited the *Amalgamated* decision as an example of the fact that "When the exercise of state power over a particular area of activity threatened interference with the clearly indicated policy of industrial relations, it has been judicially necessary to preclude the states from acting." *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236, 243.

The court below refused to follow the decision in *Amalgamated*. Yet none of the grounds on which it sought, explicity or otherwise, to distinguish the instant case from *Amalgamated* has merit.

The central theme in the decision of the court below is that the King-Thompson Act is saved from unconstitutionality because its "dominant purpose . . . is the protection of the welfare and health of the people . . . It is an exercise of the police power of the state . . . The right of a state to regulate and control public utilities operating within its borders is inherent and referable to the police powers." (R. 344, 345) This reliance on the state's right to regulate public utilities as a part of its police power is wholly

misplaced. This Court has cautioned that "a state cannot avoid the operation of this rule [the rule of federal preemption] by simply invoking the convenient apologetics of the police power." *Kansas City Railway Company v. Kaw Valley Drainage District*, 233 U.S. 75, 79; *Morgan* v. *Commonwealth of Virginia*, 328 U.S. 373. And in *Northern Pacific RR Co.* v. *State of Washington*, 222 U.S. 370, this Court stated, at p. 378:

> "It is elementary . . . that the right of a State to apply its police power for the purpose of regulating interstate commerce, in a case like this, exists only from the silence of Congress on the subject, and ceases when Congress acts on the subject or manifests its purpose to call into play its exclusive power . . ."

The *Amalgamated* decision involved two regulated public utilities, one a public transit system, and the other a gas company of the same character as is involved in the instant case. This Court noted that the decision of the Wisconsin Supreme Court which had upheld the constitutionality of the Wisconsin statute had "stressed the importance of utility service to the public welfare and the plenary power which a state is accustomed to exercise over such enterprises." (340 U.S. at p. 388) This Court, however, specifically rejected the contention that the federal Act left the states free to regulate strikes in local public utilities which give rise to local emergencies. Based upon a careful review of the legislative history of the federal Act and of its administration this Court concluded:

> "No distinction between public utilities and national manufacturing industries has been drawn in the administration of the federal Act, and when separate treatment for public utilities was urged upon Congress in 1947, the suggested differentiation was expressly rejected. Creation of a special classification for public utilities is for Congress, not for this Court." (340 U.S. at p. 391-393)

To the contention that by establishing special procedures for the handling of strikes which may create a national emergency Congress indicated an intent to leave the states

free to regulate strikes which create local emergencies this Court gave this reply:

> ". . . congressional imposition of certain restrictions on petitioners' right to strike far from supporting the Wisconsin Act, shows that Congress has closed to state regulation the field of peaceful strikes in industries affecting commerce. United Auto Workers v. O'Brien, supra, at 457. And where, as here, the state seeks to deny entirely a federally guaranteed right which Congress itself restricted only to a limited extent in case of national emergencies, however serious, it is manifest that the state legislation is in conflict with federal law." (340 U.S. at p. 394)

Equally without merit is the related contention accepted by the court below (R. 353) that "the King-Thompson Act is strictly emergency legislation and is not a comprehensive code for the settlement of disputes in utilities as the Wisconsin Act appeared to be." For one thing, the Missouri statute *is*, in fact, a comprehensive code regulating labor relations in public utilities. Its very declaration of policy (Sec. 295.010) asserts that "the state's regulation of labor relations affecting such public utilities is necessary in the public interest." It imposes requirements with respect to the duration and renewal of collective bargaining labor agreements in public utilities. (Sec. 295.090; 295.100) It provides a special type of compulsory fact-finding procedure applicable to labor disputes in public utilities. (Sec. 295.120) And it even provides penalties where the Mediation Board has found "that any public utility has refused to bargain collectively in good faith with its employees over the terms and conditions of employment." (Sec. 295.200)

But even if this were not so — even if it could truly be said that the Missouri statute did not generally regulate labor relations in public utilities — this would not serve to distinguish this case from *Amalgamated*. In *Weber* v. *Anheuser-Busch*, *supra*, at p. 480, this Court, speaking to this precise point, said:

> ". . . the State cannot be heard to say that it is enjoining that conduct [conduct regulated by the federal Act]

for reasons other than those having to do with labor relations. In Amalgamated Association v. Wisconsin Employment Relations Board, supra, the statute was directed at the preservation of public utility services and not at maintenance of sound labor relations, but the State's injunction was reversed. Controlling and therefore superseding federal power cannot be curtailed by the State even though the ground of intervention be different than that on which federal supremacy has been exercised."

Nor is there merit in the attempt of the court below (R. 352-353) to avoid the impact of the *Amalgamated* decision by relying upon certain differences in form between the Wisconsin and the Missouri statutes in question. Surely no material distinction can be found in the fact that the Wisconsin statute outlawed all public utility strikes while the Missouri statute prohibits such strikes after the state has seized the operation. It must be borne in mind that under the Missouri statute any "possibility of labor strife" in public utilities is deemed to constitute a "threat to the welfare and health of the people" (Sec. 295.010), and seizure is authorized not only after a strike has begun but upon the threat of a strike, whenever it appears that "the effective operation of a public utility be threatened . . ." (Sec. 295.180). It is pure sophistry to suggest that the Missouri statute constitutes any less of an interference with the right to strike than did the Wisconsin statute. The right to strike and to engage in peaceful picketing is protected by federal law. State laws which impinge upon that right must yield. And such impingement need not take the form of an outright prohibition against striking in order to run afoul of the supremacy clause. Clearly the limitations on the right to institute or to continue a strike contained in the King-Thompson Act are no less of an interference with federally protected rights than this Court found to be true of the strike vote provisions in *UAW* v. *O'Brien*, 339 U.S. 454.

Likewise, the fact that the Missouri statute uses seizure instead of compulsory arbitration as a device for the ultimate resolution of disputes affords no valid substantive

basis for distinguishing this case from *Amalgamated*. In that case this Court, after reviewing the pertinent legislative history, concluded that the technique of compulsory arbitration employed in the Wisconsin Act "was rejected by Congress as being inconsistent with its policy in respect to enterprises covered by the federal Act, and not because of any desire to leave the states free to adopt it." (340 U.S. at p. 394-395) As this Court found in *Youngstown Sheet and Tube Co. v. Sawyer*, 343 U.S. 579, that same legislative history demonstrates beyond any doubt that Congress likewise rejected seizure as a technique for handling disputes in industries affecting commerce. Thus, for example, in the first session of the 80th Congress five separate though identical bills were introduced for the settlement of strikes in public utilities. Significantly, those bills, which failed of passage, were urged by one of their principal sponsors, Congressman Case, on the ground that they would give "local and state governments first opportunity to deal with all disputes within their jurisdiction if they can handle them adequately." (93 Cong. Rec. A1007) But even those bills contained no seizure provisions, and Congressman Case observed that "Government seizure should not be resorted to in any event." (93 Cong. Rec. A1007) In the debates on the floor of the Senate concerning the provisions that ultimately became Title II of the Taft-Hartley Act Senator Taft made it clear that the Congress drew no distinction between compulsory arbitration and seizure so far as conflict with federal policy is concerned. He said:

> "We do not feel that we should put into the law, as a part of the collective bargaining machinery, any ultimate resort to compulsory arbitration, or to seizure, or any other action. We feel that it would interfere with the whole process of collective bargaining." (93 Cong. Rec. 3835)

Congress has rejected seizure as a technique for handling disputes in industries affecting commerce on its merits — on the ground that it conflicts with the national policy of free collective bargaining—and not out of any de-

sire to leave the states free to adopt it, any more than it left the states free to impose compulsory arbitration upon the parties to such disputes.

The Wisconsin statute was declared invalid in *Amalgamated* not only because it denied the federally protected right to strike but also because by denying that right and by adopting a technique that was at odds with free collective bargaining the Wisconsin statute conflicted with the basic purpose and policy of the federal law. That conclusion is applicable in full to the seizure-strike-ban provisions of the Missouri statute. That statute, no less than the Wisconsin law, clashes head-on with the national policy of free collective bargaining.

Collective bargaining is essentially a "give-and-take" process. It presupposes some equality of bargaining power, and requires that at each side of the bargaining table there be a recognition of the power of the other party to enforce its bargaining demands by the use of economic pressure that may be more costly to the party which is the object of such pressure than an intransigent adherence of that party to its position in the negotiations. So far as the employees are concerned, collective bargaining requires that they be free to strike. Even the most ardent advocates of the interests of management have recognized that fact. Ira Mosher, then Chairman of the Executive Committee of the National Association of Manufacturers, testifying before the Senate Committee on Labor and Public Welfare, in 1947, stated:

> "We have to preserve the right to strike if we are going to have good faith collective bargaining over wages, hours, and working conditions. . . ."[3]

Dr. Gustav Peck, senior specialist in labor for the Library of Congress, in a Staff Report to the Senate Committee on Labor and Public Welfare, observed:

> "It is no disparagement of collective bargaining to say that it rests on the right to use the economic power of

[3] Hearings on S. 1126, 80th Cong., 1st Sess. p. 950.

> the strike or the work stoppage to determine or to compromise unresolved issues between unions and managements. Collective bargaining presupposes relatively equal strength of the parties so that each could inflict hard-to-take damage on the other. The appreciation of the power of the other side makes for a respectful inspection of the demands and position of the parties and facilitates the compromises which lead to adjustment and agreement.[4]

Another authority on the subject has stated the point, as follows:[5]

> "In the final analysis, however, what makes collective bargaining work is the risks inherent in a strike. Where the stakes are high, the bargain is never struck until there is no place else to go, nothing left to do, no possible escape from choosing between compromise and battle. Experience has shown over and over again that when government supplies a procedure, management and labor rarely trade out an agreement. Each side hopes that it may get more favorable terms by following the procedure than by settlement. *To put it in a phrase the strike or the fear of a strike is the motive power that makes collective bargaining operate.*" (Emphasis added)

To the extent, then, that the Missouri seizure law interferes with the right to strike it undermines and conflicts with the national policy of collective bargaining. Relieved of any threat that a breakdown in negotiations may lead to a cessation of operations, the employers covered by the law

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[4] *Emergency Disputes Settlement*, Staff Report to the Subcommittee on Labor and Labor-Management Relations, 1952, p. 3. The indispensability to collective bargaining of the right to strike is also pointed out in the following studies: John B. Clark, *The Theory of Collective Bargaining*, American Economic Assn. Quar., April, 1909; John A. Fitch, *Strikes and Lockouts*, Encyclopedia of the Social Sciences, 1934, Vol. XIV, p. 240 ff; *National Labor Relations Bulletin No. 1*, (1940) pp. 8, 10-11; David A. McCabe and Richard A. Lester, *Labor and Social Organization*, 1938, pp. 107-108; The Twentieth Century Fund, Labor Committee, *Strikes and Democratic Government* (1947) pp. 13-14.

[5] Archibald Cox, *The Taft-Hartley Act After Six Years*, Proceedings of the Fifth Annual Conference on Industrial Relations, University of Buffalo (1953).

have no inducement to bargain in good faith, to compromise, to offer reasonable counter-proposals, or to agree to the technique of voluntarily arbitrating the dispute. They need only go through the motions of bargaining, confident that in the event a strike is threatened the Governor will step in and endeavor to maintain continuous operation.

Recognizing that such an attitude toward collective bargaining is bound to prevail whenever seizure or compulsory arbitration is available as an alternative to good faith bargaining, authorities on the subject of collective bargaining have been almost unanimous in their condemnation of both techniques for dealing with labor disputes.[6] In the report of Dr. Peck, referred to above, the following conclusion is drawn from a review of seizures by the Federal Government:

> "The conclusion from the war and postwar seizures must be that seizures can stop or break strikes and provide conditions for continued production. Seizure can also have the practical effect of a dictated contract. *But there is no experience that seizure has promoted collective bargaining by the parties in the dispute or resulted in speeding up the process of coming to agreement.*" (Emphasis added)

The Chamber of Commerce of the United States, appearing before the House Committee on Education and Labor in 1953, took the flat position that "Seizure of private property involved in a labor dispute is not justified." Elaborating on this observation, the statement said:

> "The seizure itself does nothing to solve the labor issues over which the parties are at odds. Its only use is to insure continued production by the imposition of Government controls . . .
>
> "Carried to its logical conclusion, seizure is a distasteful intervention by Government from which only a stalemate can result. As a matter of fact, it is far less effective and more costly in human relations and

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[6] See, for example, 27 Texas Law Review, 587; John R. Commons, *Industrial Economics*, 1934, p. 854; E. E. Cummins, *The Labor Problem in the United States*, 1935, p. 251, 339. See also the authorities listed in fn. 4, *supra*.

efficiency as a means of maintaining needed production than the outright injunction against a strike or lockout . . .

"*It should be borne in mind, therefore, that alternatives to collective bargaining contain a serious hazard for our economic and political traditions and that, in the field of labor relations they offer no real hope of adequate settlement of issues . . .*"[7] (Emphasis added)

The experience of the Amalgamated Association with the New Jersey compulsory arbitration statute and the Virginia seizure statute, as reported by two qualified observers, is worthy of note.

"Prior to the adoption of compulsory arbitration for public utility labor disputes in New Jersey, Governor Driscoll recognized that such legislation might have undesirable effects on free collective bargaining. Early in 1947 he stated: 'We should seek to avoid compulsory arbitration of wage matters, since it would mean the end of collective bargaining, without which neither free enterprise nor free labor can long endure.'[21] In April of the same year, however, compulsory arbitration was made a part of the utility anti-strike law. To what extent has Governor Driscoll's prediction been supported by the events which have followed the enactment?

"The collective bargaining relationship between The Public Service Transportation Company, the largest operator of the city buses in the United States, and the Amalgamated Association of Street, Electric Railway and Motor Coach Employees, AFL, is worthy of examination in this respect. These two organizations have been bargaining with each other for more than 50 years. During this entire period there have been no strikes or slowdowns since 1923. The only voluntary arbitration of new contract terms occurred in 1919. It is true they did not avoid several cases before the War Labor Board but with these exceptions the parties prior to compulsory arbitration always reached agreement on their new contract terms without resort to economic force or arbitration. Likewise, although

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[7] Statement of Powell C. Groner, Before the House Committee on Education and Labor, in behalf of the Chamber of Commerce of the United States. *Hearings Before the Committee on Labor and Public Welfare*, 83rd Cong., 1st Sess., Part I, p. 173.

"[21] Minutes of the 1947 New Jersey Assembly, pp. 70-71."

the grievance procedure in their contracts has always terminated in voluntary arbitration, the latter was never employed. One might have expected that such collective bargaining would have continued without much change under compulsory arbitration legislation. This has not been the case. . . .

"In 1947, the first year that compulsory arbitration was effective, the parties were unable to reach an agreement. This was the first peace-time negotiation which failed since 1923. It was only the beginning. In 1948 and again this year the parties have had the major terms of their contracts determined by compulsory arbitration rather than by free negotiation. Thus, free collective bargaining has been ineffective in this relationship and the parties doubt, for reasons which will be presented, that it can ever be revitalized as long as the law is in effect. A number of other New Jersey utility companies, and their unions, have had the same experience. It is highly significant that without exception every company which had new contract terms settled by compulsory arbitration under the Act in 1947 repeated this performance in 1948 . . . . (Thomas Kennedy, *The Handling of Emergency Disputes*, Industrial Relations Research Association, Proceedings of Second Annual Meeting, 1949, p. 14, 19-21.)

"In the case of the local bus industry, the experience under seizure seems to indicate that the Act did contribute in some cases to the breakdowns in collective bargaining. The provisions of the law and requests for fare increases have apparently combined to encourage use of the statute in two ways. On the one hand, it appears that either or both of the disputants have felt that state seizure would force public officials to grant fare increases that would provide revenues sufficient to offset the pay increases demanded by the union. On the other, by resorting to seizure companies could at least postpone, and in some cases avoid, wage increases until they obtained rate relief."
(Robert R. France, *Seizure In Emergency Labor Disputes in Virginia*, 7 Industrial and Labor Relations Review, Cornell University, 351.)

It is clear, therefore, the decision of Congress in 1947 to reject seizure and compulsory arbitration and to adhere

to the policy of free collective bargaining was bottomed on a solid foundation of logic and experience. The decision having been made to continue the national policy of promoting collective bargaining, Missouri was not free to adopt an approach to the handling of labor relations in industries affecting commerce which is in direct conflict with that policy.

II—SUBSEQUENT TO THE AMALGAMATED DECISION CONGRESS HAS REJECTED PROPOSALS DESIGNED TO OVERRULE THAT DECISION.

Shortly after the decision of this Court in the *Amalgamated* case legislation was introduced designed to overrule that decision by amending the National Labor Relations Act so as to provide that nothing in the Act could be construed to nullify the provisions of any state laws which regulate or qualify the right of public utility employees to strike or which prohibits such strikes. Such a bill was introduced in 1951 in the 82nd Congress (S. 1935) but it was never reported out of the Senate Labor and Public Welfare Committee.

In 1954, the Congress was again presented with an opportunity to express its wish as to whether it wanted to amend the Act so as to overrule the decision of this Court in the *Amalgamated* case.

Senator Smith of New Jersey introduced a bill, S. 2650, 83rd Congress, 2nd Sess. (1954), which proposed adding a new subsection to Section 6 of the Act to read as follows:

> "(b)(1) The Board, in its discretion, may decline to assert jurisdiction over any labor dispute where, in the opinion of the Board, the effect on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction.
>
> "(2) Nothing in this Act shall be deemed to prevent or bar any agency, or the courts of any State or Territory, from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragrph (1) of this subsection, to assert jurisdiction."

As a related amendment, he further proposed to add to Section 14 a new subsection to read as follows:

"(c) Nothing in this Act shall be construed to interfere with the enactment and enforcement by the States of laws to deal in emergencies with labor disputes which, if permitted to occur or continue, will constitute a clear and present danger to the health or safety of the people of the State: Provided, that no State shall be authorized . . . to take action in any labor dispute in which the Federal Government is acting pursuant to Sections 206 to 210, inclusive, of this Act . . ."

This bill was in accord with the recommendations of President Eisenhower in his message to Congress:

"The act should make clear that the several States and Territories, when confronted with emergencies endangering the health or safety of their citizens, are not, through any conflict with the Federal law, actual or implied, deprived of the right to deal with such emergencies. The need for clarification of jurisdiction between the Federal and the State and Territorial Governments in the labor-management field has lately been emphasized by the broad implications of the most recent decision of the Supreme Court dealing with this subject. The Department and Agency Heads concerned are, at my request, presently examining the various areas in which conflicts of jurisdiction occur. When such examination is completed, I shall make my recommendations to the Congress for corrective legislation." (House of Representatives, Document No. 291, 83rd Cong., 2d Sess., January 11, 1954)

This was further developed in a letter to Senator Smith as follows:

"My associates are still studying this extremely complex problem, and while that study has not as yet been completed, it has gone far enough to develop some conclusions:

"(1) Where the governor of a State determines that a labor dispute is endangering, or will endanger, the health and safety of the citizens of that State, certainly nothing in the Federal law should have the effect of preventing the state from dealing with that dispute. This was covered specifically in my message of January 11.

"(2) Nothing in the Federal law should have the effect of preventing a State from exercising its tradi-

tional police powers for maintaining public order." (Letter of March 26 ,1954, to Senator H. Alexander Smith; see Senate Report No. 1211, 83rd Cong., 2nd Sess., p. 8)

The Senate Committee on Labor and Public Welfare in reporting favorably on the Smith Bill observed that, in addition to giving States the right to act in labor disputes where emergencies exist, even though the enterprises involved are subject to the Act, the bill also permitted the Board to select for decision only those cases substantially interstate in character. The Committee stressed the point that the amendments were substantially along the lines indicated by the President. (See Senate Report No. 1211, 83rd Cong., 2nd Sess., pp. 2, 3, 17, and 18.)

The amendments and the Committee report occasioned vigorous debate on the floor of the Senate. Senator Smith, in advocating the passage of the bill, admitted that the issue of state powers as against federal law was "one of the most controversial subjects in the bill" (100 Cong. Rec. 5836). He expressly stated that his bill would give States the right to act in transit strikes where the transit company was substantially the only means of transportation to large elements of the public (100 Cong. Rec. 5383).

Senator Goldwater introduced an amendment, the object of which was to extend State jurisdiction to companies other than public utilities (100 Cong. Rec. 5840). He stated that the enactment of such a bill presents to the American people "the last chance they will ever have to return to the doctrine of States rights in this field" (100 Cong. Rec. 6198).

During the close of the debate, Senator Cooper stated:

> "With respect to the States-rights amendment, I shall oppose it, because the ultimate result, it seems to me, would be a division of responsibility on labor-management relations affecting interstate commerce between Federal and State Governments. It would mean two jurisdictions, and it could lead to two systems of law, perhaps two contradictory systems." (100 Cong. Rec. 6200)

Despite the administration support the Senate failed to pass the Smith Bill. Rather, on May 7, 1954, it was recommitted by a vote of 50 to 42 (100 Cong. Rec. 6202).

In 1958 Senator Holland introduced the same bill (S. 3692, 85th Cong., 2nd Sess.) which had been introduced in 1951 to overrule the *Amalgamated* decision. It would have amended the National Labor Relations Act to provide that:

> "Nothing in this act or in the Labor Management Relations Act, 1947, shall be construed to nullify the provisions of any State or Territorial law which regulates or qualify the right of employees of a public utility to strike or which prohibit strikes by such employees."

The Subcommitte on Labor of the Senate Committee on Labor and Public Welfare held hearings on the proposal, at which Senator Holland testified in favor of the bill, and others, including the International President of the Amalgamated Association, submitted statements in opposition to it. (*Hearings Before The Sub-Committee on Labor*, 85th Cong., 2nd Sess. pp. 465ff.; 1444ff.) The bill was not reported out of the Subcommittee, but Senator Holland introduced the measure on the floor of the Senate. He plainly disclosed the purpose of his proposed amendment in these terms:

> "We offer the amendments in the earnest hope that finally Congress will act to fill this particular legal 'void' — or labor-management 'no man's land' — which fails to assure the continued operation of local public utilities, which dangerous situation was created on February 26, 1951, by a strained interpretation, by the United States Supreme Court, in the so-called Wisconsin case, construing the legislative intent in the passage of the Taft-Hartley Act." (104 Cong. Rec. 9984)

The proposed amendment was debated (104 Cong. Rec. 9984-9995) and after such debate it was voted upon and defeated 60 to 27. (104 Cong. Rec. 9995)

The 86th Congress has very recently enacted the Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257). On April 25, 1959, during the debates on

S. 1555, the bill which was subsequently enacted as this new law, Senator Holland introduced the same amendment that he had introduced in 1958 as described above. Again he made it plain that his purpose was to secure legislation that would overrule the *Amalgamated* decision. (105 Cong. Rec. 6037) In support of his plea for permitting the states to regulate strikes in local public utilities he stated:

> "I remind the Senate that the public utilities which serve in these fields are given licenses or franchises by the states in which they serve; that they are regulated by the states in which they serve; that they are given their licenses and franchises in order to serve the public; that they are required to serve the public; that no lockout or shutdown should be permitted." (105 Cong. Rec. 6038)

When the suggestion was made that the matter be submitted to the Committee for further hearings Senator Holland did not withdraw the amendment, and said:

> "I hope . . . that the Senate will take the matter out of the hands of the Committe now by taking favorable action on this very simple amendment to restore to the States the power to handle under their own laws, these relatively few vital industries." (105 Cong. Rec. 6043)

As in 1958, the proposed amendment was again voted on, and again defeated, this time by a vote of 64 to 27. (105 Cong. Rec. 6044)

The refusal of Congress to change a statute when alleged faults are brought to its attention is of special significance in its interpretation and indicates legislative acquiescence in its contemporary judicial construction. *Neuberger* v. *Commissioner*, 311 U.S. 83, 89. From the legislative history reviewed above it is clear beyond all doubt that Congress has specifically affirmed and reenacted the rule of the *Amalgamated* decision. It has refused, as it did in 1947, to create a special classification for local public utility employees. It has again affirmed that such employees, no less than other employees engaged in operations that affect interstate commerce, may not be subjected to state laws which deny or curtail the rights guaranteed to them

under federal law or which conflict with the federal policy of free collective bargaining, as does the King-Thompson Act.

That such is the intent of Congress is plain not only from what Congress has refused to do, but also from what it did do in its recent amendment of the National Labor Relations Act. In Public Law 86-257 Congress provided:

> "Sec. 701. (a) Section 14 of the National Labor Relations Act, as amended, is amended by adding at the end thereof the following new subsection:
> "'(c)(1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act, decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.
> "'(2) Nothing in this Act shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.'"

The legislative history of these provisions (House Conf. Rep. No. 1147, 86th Cong., 1st Sess., pp. 36-37) underscores what their language already makes clear, namely that these provisions have a two-fold purpose: (1) to allow the States to regulate labor disputes even where the N.L.R.B. has jurisdiction, *provided* that the Board has declined to assert jurisdiction, and (2) to make sure, at the same time, that the Board will not refuse to assert jurisdiction in any case in which it would assert jurisdiction under the standards it had established as of August 1, 1959. Under the standards in effect as of that date the Board asserts jurisdiction over all public utilities whose annual gross volume of business is at least $250,000 or which have inflow or out-

flow across state lines of $50,000 per year, and this, as the Board has noted, covers substantially all local utilities which have any pronounced impact on interstate commerce. *Sioux Valley Empire Electric Association*, 122 N.L.R.B. No. 18.

By enacting into law the present broad exercise by the Board of its jurisdiction over local utilities whose operations affect commerce, and rejecting the attempts to carve such utilities out of the Act for special treatment by the states in their efforts to avoid local emergencies, Congress has left even less room than there was at the time of the *Amalgamated* case for a decision by this Court that would sustain the Missouri statute. Congress has been more than amply appraised of the problems with which local authorities are faced in avoiding disruptions of utility services. It has reaffirmed its policy that those problems are best handled by extending to the parties involved in labor disputes in such utilities all of the factors that make for free collective bargaining unfettered by seizure, compulsory arbitration or any other techniques that militate against free collective bargaining. In applying the King-Thompson Act to utilities affecting interstate commerce Missouri has adopted a policy squarely in conflict with that of the Congress, and that statute, so applied, must be declared invalid.

III—THIS CASE IS NOT MOOT.

The decision of the court below indicates (R. 341) that an *amicus curiae* before that court had urged dismissal of the appeal on grounds of mootness because the dispute which gave rise to the strike by the Appellants had been settled and the seizure lifted. The court below properly rejected the suggestion of mootness (R. 341-342); we assume that if the matter is raised before this Court it will be fully treated in the brief of the Appellants; and we shall not, therefore, discuss that issue at any length in this brief.

It appears, however, that in the court below the suggestion of mootness was predicated upon the decision of this

Court in *Harris* v. *Battle*, 348 U.S. 803. In view of the fact that that case involved the Amalgamated Association, and the undersigned were counsel for the Appellants in that matter, it may be helpful to the Court to point out the very crucial difference in the procedural posture of that case as compared to the instant one.

As is revealed by the documents filed with this Court in that case (Case No. 111, October Term 1954) the plaintiffs brought suit in a Virginia State court to enjoin the enforcement of a Virginia statute providing for seizure in public utility labor disputes. That suit was instituted before the State had effectuated any seizure. The seizure was thereafter effectuated. However, *before the matter came before the state court for the initial hearing in the case* the labor dispute had been settled; the strike had been called off, and the seizure had been lifted. So far as the record in that case revealed, the seizure that had been lifted even before the initial trial in the case left behind it no outstanding claims for injury or liability other than the plantiffs' contention that the threat of the application of the statute in future disputes was an interference with their rights.

Such a situation is hardly comparable to that which is involved in the instant case, and the *Harris* case is no guide to a decision on the mootness issue here. Here, apart from many other considerations, the seizure and the action taken by the Appellants in defiance of the seizure left behind several sources of serious potential liability which hinge upon the question of whether the statute pursuant to which the seizure was effectuated is valid. In these circumstances the question of whether the Missouri statute involved is constitutional can surely not be considered moot. *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U.S. 416, 417.

Nor can the threat, so clearly demonstrated in this record and recognized by the court below (R. 341), to utilize the seizure provisions of the statute in future disputes be lightly discounted. Indeed, in some respects this is the most compelling consideration for rejecting any mootness

contention in this case. This Court has often ruled that one who is a potential victim of an unconstitutional statute need not wait until the injury is actually inflicted but may bring suit in equity to enjoin a threatened enforcement of the statute. *Village of Euclid* v. *Ambler Realty Co.*, 272 U.S. 365; *Petroleum Exploration Inc.* v. *Public Service Commission*, 304 U.S. 200. Surely one who has already been victimized by an unconstitutional seizure, and stands in constant jeopardy of being victimized in the future by such seizures, should not be denied the relief that only this Court can now afford because the latest seizure was lifted before this Court has had an opportunity to rule on the issue.

As long as the King-Thompson Act is allowed to stand, the Appellants, all other unions representing public utility employes in Missouri, and the members of such unions, are subjected to the continuing threat of an unconstitutional interference with rights guaranteed by federal law. No valid reason exists to prevent this Court from expunging that threat now and in this case.

CONCLUSION

For all of the reasons set forth above, it is respectfully submitted that the judgment of the Supreme Court of Missouri in this matter should be reversed.

Respectfully submitted,
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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al.,
Appellants,
vs.
STATE OF MISSOURI,
Appellee.

On Appeal From the Supreme Court of Missouri.

BRIEF

For Laclede Gas Company, Amicus Curiae.

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On Appeal From the Supreme Court of Missouri.

BRIEF

For Laclede Gas Company, Amicus Curiae.

STATEMENT OF POSITION.

Amicus curiae, pursuant to the consent of the attorneys for the appellants and appellees, files this brief in support of the appellee's position. Argument has been confined to the merits of the controversy although there is a definite possibility that this Court may be justified in finding that this cause is moot under the precedent of **Harris v. Battle**, 348 U. S. 803 (1954). Amicus curiae contends that the National Labor Relations Act of 1947 does not invalidate those sections of the Missouri King-Thompson Act which are in issue in this appeal. This question of pre-emption, in the opinion of amicus curiae, is the crucial issue involved in this case; therefore this brief is confined to that question.

STATUTES INVOLVED.

Sections 295.180 and 295.200 (1) and (6), R. S. Mo. 1949, which are the seizure-no strike provisions of Missouri's King-Thompson Act, § 295.010 et seq., R. S. Mo. 1949, and §§ 7 and 13 of the Labor Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. § 141 et seq., are the statutes which are primarily involved in this appeal. These statutes are set out or discussed in the argument below.

SUPPLEMENTARY STATEMENT.

A. The Work Stoppage Created An Emergency Which Threatened Public Health, Safety and Welfare in the St. Louis Area.

The consideration of this appeal requires a brief recapitulation of the situation existing in the St. Louis community at the time the Governor of the State seized the facilities of Laclede Gas Company, hereinafter referred to as Laclede, and continuing until Laclede's employees went back to work pursuant to the injunction granted under § 295.200 (6), R. S. Mo. 1949.

Laclede at the time of the strike distributed gas solely in the State of Missouri to some 364,000 customers in the St. Louis area (R. 32), including practically all the hospitals (R. 33). On July 1, 1956, approximately 2200 of Laclede's 2500 employees went on strike (R. 35-36). Since the striking employees included the members of the foreman's union, Local 8-109, there were not sufficient supervisory employees satisfactorily to operate the utility (R. 34). Usually in a ten day period Laclede would receive about one hundred calls a day from customers regarding failure of gas supply. However, from the 1st of July, 1956, to July 11, 1956, some thirteen thousand

calls were recorded complaining of no gas, failure of service, or leaks on the streets (R. 39). By the 11th of July practically all of St. Louis County's more than one half million residents had been denied gas by the closing of valves (R. 43). Water had also been injected into some of the lines serving the City of St. Louis' approximately 800,000 inhabitants (R. 43). This created the danger that the water in traveling to a low spot might temporarily shut off someone's gas, allowing it to go back on unlighted as the water passed the outlet (R. 46). Gas also leaked into the sewer systems creating a danger of explosion, but due to lack of personnel Laclede was unable to handle such developments (R. 49). Bottles containing gas odorant were also broken, creating the fear of gas leaks and increasing the fear of gas explosion (R. 126).

This situation, continuing to grow worse, existed against the backdrop of the following statement of the Vice President of the striking local's international union, made on the day preceding the walk-out.

> "With the attitude being displayed by the company, there is little hope for settlement of the disdisputed issues today. *The Union is preparing for a long strike*" (R. 185) (Emphasis supplied).

The Governor of Missouri, because of this situation, invoked the provisions of § 295.180, R. S. Mo. 1949 (R. 16). He proclaimed in part by Proclamation of the 5th of July, 1956:

> "That the public interest, health and welfare are jeopardized as a result of the treatened interruption of such public utility" (R. 16).

and he issued Executive Order No. 1, stating in part:

> "Now, therefore, I, Phil M. Donnelly, Governor of the State of Missouri, by virtue of the authority vested in me by Chapter 295, and particularly

§ 295.180, of the Revised Statutes of Missouri, 1959, do hereby order as follows:

"I hereby take possession of the plants, equipment, and all facilities of the Laclede Gas Company, located in the State of Missouri, for the use and operation of the State of Missouri in the public interest, effective at four o'clock P. M. Central Standard Time, Thursday, July 5, 1956" (R. 18).

Thereafter the strike continued until, pursuant to an injunction to enforce § 295.200 (1) of the King-Thompson Act, Laclede's employees went back to work on July 14, 1956 (R. 341).

SUMMARY OF ARGUMENT.

I.

The first question in a labor pre-emption case is whether the conduct in question is protected by the National Labor Relations Act of 1935 as amended by the Labor-Management Relations Act of 1947, 61 Stat. 136, 29 U. S. C. § 141 et seq. The conduct in this case was the continuation of a strike by employees of a public utility after it had been seized by the Governor of Missouri to protect the public health and welfare in an emergency. Amicus curiae maintains that this conduct did not constitute a "peaceful strike for higher wages," which this Court has defined as a protected right under § 7 of the L. M. R. A., **International Union of U. A. A. v. O'Brien**, 339 U. S. 454, 457 (1951); **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, 340 U. S. 383, 394 (1951). However, even if this conduct did constitute a "peaceful strike for higher wages" and was, therefore, protected by § 7, amicus curiae believes that this protection does not pre-empt the field of labor legislation so as to exclude the seizure-no-strike provisions of Missouri's King Thompson Act, §§ 295.180 and 295.200 (1), R. S. Mo. 1949. This belief is based on the conviction that Congress by protecting certain employee "rights" in § 7 of the L. M. R. A. did intend to pre-empt the area from the state laws which interfere with their exercise except those essential state police measures which are necessary for the preservation of the local public health, safety and welfare from immediate jeopardy.

A. The Missouri seizure-no-strike provisions in question are clearly designed to protect the public health and welfare because they only take effect after the governor makes a specific finding that an emergency exists which jeopardizes the public health and welfare, § 295.180, R. S. Mo. 1949.

Thus it is clear that these provisions are emergency measures to protect the public health and safety, and do not constitute a "comprehensive code for the settlement of labor disputes." If they were the latter, they would be pre-empted under the holding in **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 383 at 393. Furthermore, the fact that the seizure-no-strike provisions are limited to public utilities is additional proof that these sections are aimed only at preserving public health and safety. This is because public utilities usually enjoy a monopoly in furnishing the essential services to the community, thus the denial of such services can endanger local health and safety.

B. The labor pre-emption cases show that § 7 of the L. M. R. A. has not been held to bar bona fide state health and safety laws even though they interfere with rights protected by § 7. None of the cases like **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468 (1955), or **International Union of U. A. W. v. O'Brien**, 339 U. S. 454 (1951), which developed the pre-emption doctrine with respect to protected activities, involved a state law designed solely to preserve the public health and safety. This Court in some of these cases, moreover, expressly declined to decide whether the pre-emption doctrine it was evolving extended to state health and safety laws, **Local 24 International Brotherhood of Teamsters v. Oliver**, 358 U. S. 283, 297 (1959); **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 383, 393-394. The violence cases, furthermore, which hold that the Taft-Hartley Act does not bar state laws or court action which control violence are based on the principle that Congress did not intend to pre-empt the field from state police measures essential to the preservation of public safety and order, **United Auto Workers v. Wisc. Empl. Rel. Bd.**, 351 U. S. 266 (1956); **Allen-Bradley Local v. Wisc. Empl. Rel. Bd.**, 315 U. S. 740 (1942); and **Youngdahl v. Rainfair, Inc.**, 355 U. S. 131 (1957). This

principle that Congress did not intend to invalidate essential state police laws is just as applicable to conduct protected by § 7 which jeopardizes a state's safety and welfare as it is to violent conduct.

C. By analogy to the quarantine and inspection cases under the commerce clause, Art. I, Sec. 8, U. S. Const., it is clear that the mere fact that an activity is federally protected does not preclude state interference with the activity in order to preserve the public health and safety, **Reid v. Colorado**, 187 U. S. 137 (1902); **Compagnie Francaise de Navigation a Vapeur v. Louisiana State Bd. of Health**, 186 U. S. 380 (1902). Furthermore, the fact that the state is allowed to interfere with a federally protected activity for this limited purpose does not mean that the state can use its general police power to intervene for all purposes, **Buck v. Kuykendall**, 267 U. S. 307 (1925).

D. Congress chose to protect certain employee "rights" in § 7 of the L. M. R. A., and this Court has held that Congress thereby showed an intention to pre-empt that area from most state laws which interfere with § 7 rights, **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 483 (1951). But the use of the word "right" in § 7 also clearly shows that Congress did not intend to pre-empt the field from all state laws which interfere with the protected rights. It has always been understood that all "rights" which involve conduct are subject to limitations by essential police measures which protect public health, safety and welfare, **Jacobson v. Massachusetts**, 197 U. S. 11 (1905). Even the most basic human "rights" are subject to the essential power of the state to protect the public when there is a clear and present danger, **Schenck v. United States**, 249 U. S. 47 (1919). Thus, the word "right" implies that the individual or group is free to engage in the activity in question except when it endangers the public health, safety or welfare. This historic limitation on

all "rights" clearly shows that Congress by protecting certain employee "rights" did not intend to bar the adoption of essential state police measures which preserve the public health, safety or welfare. There are enough historical limitations on the states' ability thus to interfere with an employee right to insure that the essence of the "right" which Congress sought to protect will not be jeopardized, Compare **Thomas v. Collins**, 323 U. S. 516 (1945).

E. The Congressional intent to pre-empt the legislative field to the exclusion of state police measures will only be inferred when there is a compelling congressional direction to that effect, **Savage v. Jones**, 225 U. S. 501 (1912). This rule is especially applicable where the state law is designed to protect the public health or safety, **Maurer v. Hamilton**, 309 U. S. 598 (1940). This basic preemption principle, furthermore, has been accepted by this Court in construing the national labor acts, **Allen-Bradley Local v. Wisc. Empl. Rel. Bd.**, 315 U. S. 740 (1942); **United Auto Workers v. Wisc. Empl. Rel. Bd.**, 351 U. S. 266 (1956). Since the seizure-no-strike provisions of the King-Thompson Act are bona fide health and safety measures, and since there is no compelling congressional direction to deny to the states the right to adopt health and safety laws impinging on the employees' right, it is evident that § 7 of the Taft-Hartley Act does not invalidate the seizure-no-strike provisions of the state law.

F. The legislative history of the Taft-Hartley Act, moreover, does not show any Congressional intent to pre-empt the field of labor management legislation to the total exclusion of state laws which protect the public health and welfare in an emergency. Statements made by individual legislators that seizure and other techniques had been rejected had reference only to the procedure adopted for dealing with national emergencies, not to the permissible

scope of state techniques for dealing with local emergencies which threaten local public health and safety. Since Congress was not concerned with threats to the local health and welfare caused by an emergency, it would be erroneous to assume that it intended to leave the states powerless to meet such threats. Nor does the rejection of Senator Holland's amendment to the new labor law show any Congressional intent to pre-empt the field to the exclusion of bona fide state health and safety laws. This amendment was broadly drawn and designed to overrule completely **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 383 (1951). Since the Amalgamated decision did not purport to hold that state emergency legislation to protect health and safety was invalidated, it does not dispose of the issues in the instant case. Therefore, the rejection of this broadly drawn amendment does not show a Congressional intention to invalidate state emergency laws.

The logical conclusion is that § 7 of the L. M. R. A., in protecting the right to strike pre-empts the field from most state legislation which affects that right, but does not exclude state police measures which protect the public health, safety and welfare in an emergency.

II.

The conduct in question has been defined as the continuation of a strike by the employees of a public utility after the governor seized the utility to protect the public health and welfare in an emergency. Obviously, this conduct is not prohibited by the Taft-Hartley Act, and it is the alternative contention of amicus curiae that it is not protected either. If this is correct, the conduct would be neither protected nor prohibited by the national act and, therefore, would be subject to state regulation under the doctrine of **International Union, U. A. W. v. Wisc. Empl. Rel. Bd.**, 336 U. S. 245 (1949).

A. The conduct in question was not protected because it ceased being "peaceful" after the governor had taken possession of the utility in an emergency to protect the public health and welfare. The conduct was no longer constituted a "peaceful strike for higher wages", defined as a protected activity under § 7 in **International Union of U. A. W. v. O'Brien,** 339 U. S. 454, 457 (1951). The state seizure in effect declared that after the state had taken possession the strike ceased to be "peaceful" because there was an existing emergency threatening the public. Since the strike was no longer "peaceful", it was not conduct which was protected by § 7, and the state was free to regulate this unprotected conduct.

For these reasons it is concluded that the seizure-no-strike provisions of Missouri's King-Thompson Act are not excluded by the Labor-Management Relations Act of 1947.

ARGUMENT.

I. The Exercise of Protected Activities Under § 7 of the L. M. R. A. Is Subject to State Police Regulations Which Protect Public Health and Safety in An Emergency.

Mr. Justice Harlan pointed out in his concurring opinion in the recent case of **San Diego Bldg. Trades Council v. Garmon,** 359 U. S. 236 (1959), that the first question in a labor pre-emption case is whether the conduct in question is protected by the Labor Management Relations Act of 1947. The conduct involved in this case was a continuation of a strike by the employees of a public utility after the Governor of Missouri had seized the utility for the use and operation of the State to protect the public health and welfare in an emergency caused by the interruption of natural gas service in the St. Louis area. Prior decisions have held that § 7, and perhaps to a lesser extent § 13,[1] of the L. M. R. A. protect the "right" to engage in "peaceful strikes for higher wages," and that state laws which interfere with this right are invalid since they invade a pre-empted area, **International Union of U. A. W. v. O'Brien,** 339 U. S. 454, 457 (1951); **Amalgamated Association v. Wisc. Empl. Rel. Bd.,** 340 U. S. 383, 394 (1951).

Amicus curiae contends that the appellants' conduct was not protected because the strike was not "peaceful" after

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[1] § 13 of the L. M. R. A. provides in part that . . . "Nothing in this Act, . . . shall be construed to interfere with . . . the right to strike . . ." This was obviously enacted as a rule of internal construction for the Taft-Hartley Act itself and does not in any way purport to create or protect the right to strike. This construction of § 13 was expressly adopted by this Court in *International Union v. Wisc. Empl. Rel. Bd.,* 336 U. S. 245, 258-259 (1949). For this reason § 13 has not been specifically discussed in many portions of this brief which deal with rights protected by § 7. However, if § 13 should be construed as more than a rule of internal construction, then the argument concerning § 7 would be equally applicable to § 13.

the proclamation of an emergency and seizure of the public utility. However, even if the appellants' conduct is found to be protected under § 7, it is contended that this alone is not enough to invalidate state police measures designed to protect the public health, safety and welfare in an emergency, although protection by § 7 may invalidate other state laws which interfere with a protected activity. Therefore, for the first portion of this brief it will be assumed, for the sake of argument only, that the conduct of the appellants in this case is protected by § 7 of the L. M. R. A.

A. §§ 295.180 and 295.200 (1), R. S. Mo., Are Emergency Measures of the Missouri Legislature Pursuant to Its Police Power to Preserve Public Health and Welfare.

Section 295.180, R. S. Mo. 1949, insofar as pertinent provides:

> (1) ". . . should either party in a labor dispute between a utility and its employees . . . engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare, . . . then and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the State of Missouri in the public interest."
>
> (2) "Such power and authority may be exercised by the governor through such department or agency of the government as he may designate and may be exercised after his investigation and proclamation that there is a threatened or actual interruption of the operation of such public utility as the result of a labor dispute, a threatened or actual strike, a lockout or other labor disturbance, *and that the public interest, health and welfare are jeopardized, and that the*

exercise of such authority is necessary to insure the operation of such public utility." (Emphasis supplied.)

After seizure, § 295.200 (1), R. S. Mo. 1949, provides that it shall be unlawful for any employee to call, incite, support or participate in any strike or concerted refusal to work as a means of enforcing any demand against the utility, and § 295.200 (6), R. S. Mo. 1949, provides that the courts of the state shall have the power to enforce this provision by injunction or other legal or equitable means.

The Supreme Court of Missouri upheld these seizure-no strike provisions of the King-Thompson Act, and in so doing limited its opinion to these two sections of the Act, **State v. Local 8-6**, R. 338, 317 S. W. (2d) 309 (1958). It stated, R. at 344, 317 S. W. 2d at 316:

> "The parts of the Act directly involved are Section 295.180, relating to the power of seizure, and subparagraphs (1) and (6) of Section 290.200, R. S. Mo., making unlawful a strike or concerted refusal to work after seizure and giving the state courts power to enforce the provisions of the Act by injunction or other means. Under established principles, we will restrict our consideration to those sections directly involved."

Only the validity of these two sections are thus involved in this appeal. As stated in **Allen-Bradley Local v. Wisc. Empl. Rel. Bd.**, 315 U. S .740 at 747 (1941):

> ". . . we confine our discussion to the precise facts of this case and intimate no opinion as to the validity of other types of orders. . . ."

See also **State ex rel. Board of Mediation v. Pigg**, 244 S. W. (2d) 75 (1951), holding that the other provisions of the King-Thompson Act are separable from the seizure-no strike provisions.

The validity of these sections of the King-Thompson Act rests upon the police power of the state. States have always

exercised an extensive control over public utilities, even though the utilities are engaged in interstate commerce. They set their rates, grant their charters, grant them monopolies and otherwise control their existence to a degree unpermitted as to other industries in interstate commerce. The reason is that public utilities provide services of such immediate concern to everyone in the community.

The validity of §§ 295.180 and 295.200 (1) and (6), does not, however, rest solely on the general police power of the state over public utilities. These sections, as indicated by their requirement for a definite finding that the public health and welfare be jeopardized, rest primarily on the accepted police power of a state to protect the public health, safety and welfare in emergencies. In **Cantwell v. Connecticut,** 310 U. S. 296 (1940), it was stated that a state police regulation restricting freedom of religion could not be tolerated except (l. c. at 308):

> "*When clear, and present danger* of riot, disorder, interference with traffic upon the public streets, or other *immediate threat to public safety, peace, or order appears, the power of the State to prevent or punish is obvious.*" (Emphasis supplied.)

Sections 295.180 and 295.200 (1) are clearly designed to be and can only be resorted to when there is "an immediate threat to public safety, peace, or order," **Cantwell v. Connecticut,** supra. The Supreme Court of Missouri stated below (R. 345, 317 S. W. [2d] at 316):

> "Section 295.180 authorized the governor to take possession of the utility property for the use and operation of the state of Missouri *only* when the parties to the labor dispute engage in any strike, work stoppage or lockout which, in the opinion of the governor, will result in failure to continue the operation of the public utility, and threatens the public interest, health and welfare."

The public interest, health and welfare were threatened in this case. The Governor of the State of Missouri so found and the facts confirm that finding.

The fact that the seizure-no-strike provisions of the King-Thompson Act, in addition to requiring the finding of an emergency, are also limited to public utilities clearly indicates that they are emergency legislation to protect the public health and welfare, and not a veiled attempt to regulate collective bargaining protected by § 7 of the Taft-Hartley Act. Public utilities have traditionally provided products like natural gas which are "life essentials" of the people, § 295.010, R. S. Mo. 1949. Certainly it is beyond dispute that the services provided by public utilities are essential to "the decent life of a modern community," Mr. Justice Frankfurter dissenting in **Amalgamated Association v. Wisc. Empl. Rel. Bd.**, 340 U. S. 383 at 404. Added to the essential nature of public utility services is the fact that local public utilities enjoy monopolistic franchises granted by the state. This monopoly, which the states are free to grant because of their inherent police authority over public utilities, insures that the utility shall be free from competition, and it also prevents the public from turning elsewhere when the utility's services are interrupted. This combination of the essential nature of public utility services and their freedom from competitive substitutes creates a unique situation which potentially threatens the public health and safety when the service is denied. Thus by limiting the King-Thompson Act to public utilities it is clear that the Missouri legislature was attempting only to protect the public health and safety and not to regulate labor relations.

When this limitation of the King-Thompson Act to public utilities is combined with the requirement that the governor specifically find that the "health and welfare" of the public is actually in jeopardy, it is abundantly clear that

the Missouri Supreme Court was amply justified in finding that the purpose of the Act was to preserve the public health and welfare in an emergency (R. 344, 317 S. W. 2d at 316):

> "The dominant purpose of the King-Thompson Act is the protection of th welfare and health of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership and control. It is an exercise of the police powers of the state."

B. The Labor Pre-emption Cases Show That State Police Measures Designed to Protect Public Health, Safety and Welfare Are Not Invalidated by § 7 of the L. M. R. A.

The Taft-Hartley Act does not explicitly exclude state jurisdiction over the rights it protects. Its most important "rights" provision, § 7 of the L. M. R. A., merely provides:

> "Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . :"

This Court, however, beginning with **Hill v. Florida**, 325 U. S. 538 (1945), has on several occasions struck down state legislation deemed to infringe upon an employee "right" protected by labor-management legislation. In **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, 340 U. S. 383, 394 (1951), and **International Union of U. A. A. v. O'Brien**, 339 U. S. 454, 457 (1951), this Court further stated that "peaceful strikes for higher wages" constituted a protected activity under the Taft-Hartley Act and struck down the state statute in each case which interfered with the exercise of this right. None of the cases, however, holding that state laws may not interfere with the exercise of

a § 7 right involved state public health and safety measures, **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, supra; **International Union of U. A. A. v. O'Brien**, supra; **Hill v. Florida**, 325 U. S. 538 (1945); **Bethlehem Steel Co. v. New York Labor Relations Board**, 330 U. S. 767 (1947); **Plankington Packing Co. v. Wisconsin Empl. Rel. Bd.**, 338 U. S. 953 (1950); **La Crosse Telephone Corp. v. Wisconsin Empl. Rel. Bd.**, 336 U. S. 18 (1949); **Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468 (1955). In the **Amalgamated** case, moreover, and in several more recent cases this Court has specifically refused to decide whether state statutes which are designed to preserve public health and safety would also be struck down. Thus, in **International Brotherhood of Teamsters v. Oliver**, 358 U. S. 283 (1959), which held that a state anti-trust law could not invalidate a protected clause in a collective bargaining agreement, Mr. Justice Brennan was careful to state (358 U. S. at 297):

> "'. . . Congress has sufficiently expressed its purpose to . . . exclude state prohibition, even though that with which the federal law is concerned as a matter of labor relations be related by the State to the more inclusive area of restraint of trade.' Weber v. Anheuser-Busch, Inc., 348 U. S. 468, 481. *We have not here a case of a collective bargaining agreement in conflict with a local health or safety regulation;* the conflict here is between the federally sanctioned agreement and state policy which seeks specifically to adjust relationships in the world of commerce." (Emphasis supplied.)

This question was very carefully reserved in the **Amalgamated** case itself, upon which appellants rely almost exclusively to establish their case. The Wisconsin legislation involved therein was not a health and safety regulation, but rather "a comprehensive code for the settlement of labor disputes." 340 U. S. at 393. The care taken

in the **Amalgamated** decision to point out that the Wisconsin statute was not "emergency" legislation emphasized that consideration of whether § 7 pre-empted state legislation designed to protect health and safety had been deferred (340 U. S. at 393-394):

> "Respondents rely upon that action as showing a congressional intent to carve out a separate field of 'emergency' labor disputes and, pointing to the fact that Congress acted only in respect to 'national emergencies,' respondents ask us to hold that Congress intended, by silence, to leave the states free to regulate 'local emergency' disputes. *However, the Wisconsin Act before us is not 'emergency' legislation but a comprehensive code for the settlement of labor disputes between public-utility employers and employees.* Far from being limited to 'local emergencies,' the act has been applied to disputes national in scope, *and application of the act does not require the existence of an 'emergency.'*"[1] (Emphasis supplied.)

This reference in the Amalgamated opinion was not inadvertent, for in the earlier part of the decision Chief Justice Vinson, in describing the Wisconsin statute, was careful to point out that its purpose was to regulate labor relations, not to protect the public health and safety (340 U. S. at 388):

> "In summary, the act substitutes arbitration upon order of the Board for collective bargaining when-

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[1] Appellants at page 25 of their brief read this language as proof that this Court . . . "*rejected* the contention 'that Congress intended, by silence, to leave the states free to regulate "local emergency" disputes.'" (Emphasis supplied.) As we read this language it seems that this Court instead of rejecting this contention held that it was not in issue and refused to decide whether "local emergency" legislation designed to protect the public health and safety was pre-empted because the Wisconsin statute was not "emergency" legislation.

ever an impasse is reached in the bargaining process. *And, to insure conformity with the statutory scheme, Wisconsin denies to utility employees the right to strike.*" (Emphasis supplied.)

The only conclusion which can be drawn from this refusal to decide whether state health and safety laws are invalidated is that the mere protection of an activity by § 7 does not show a congressional intent to immunize that activity from local health and safety rules.

Although the question of whether a state health and welfare measure must bow to a federally protected right has been reserved by this Court, the violence cases have uniformly held that the Taft-Hartley Act was not intended to pre-empt the entire field so as to impair the states' ability to preserve public safety and order. Admittedly none of the conduct which the states were allowed to regulate in the violence cases was, strictly speaking, protected by § 7. The basic principle relied on in these cases, however, was that state police power is not forbidden to deal with threats to the public health, safety and peace.

This principle was very clearly presented by this Court in **United Auto Workers v. Wisconsin Empl. Rel. Bd.**, 351 U. S. 266, 274 (1956). In that case the Wisconsin labor board, acting under the Wisconsin Employment Peace Act, had enjoined mass picketing, interference with free and uninterrupted use of public ways, coercion of those who desired to work, and threats of physical injury. This Court first found that the activities which had been enjoined were also "unfair labor practices" under § 8 (b) (1) of the Taft-Hartley Act. It might have seemed, if this were so, that Wisconsin would have been ousted of jurisdiction just as the states were in **Garner v. Teamsters C. & H. Local Union**, 346 U. S. 485 (1954), **and Weber v. Anheuser-Busch, Inc.**, 348 U. S. 468 (1956), because in all

three cases the Taft-Hartley Act provided a remedy for the conduct which the state sought to enjoin as an "unfair labor practice." This Court, however, in effect distinguished the two prior cases by emphasizing that this case involved the state police power's inherent ability to preserve the public peace by controlling violence (351 U. S. at 272):

> "*It seems obvious that Sec. 8 (b) (1) was not to be the exclusive method of controlling violence even against employees*, much less violence interfering with others approaching an area where a strike was in progress. No one suggests that such violence is beyond state criminal power. *The Act does not have such regulatory pervasiveness. The state interest in law and order precludes such interpretation.*" (Emphasis supplied.)

See also **Allen-Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 740 (1942); **United Const. Workers v. Laburnum Const. Corp.**, 347 U. S. 656 (1954); and **Youndahl v. Rainfair, Inc.**, 355 U. S. 131 (1957) (where this Court held that conduct which threatened to develop into, or to provoke violence was subject to state injunctive power.)

The opinion in the **United Auto Workers** case also furnishes the rationale for the retained state police power over violence. Control over violence is left to the states because they are the guardians of local peace and order. Guardianship over local peace and order includes jurisdiction to control local emergencies (351 U. S. at 274):

> "The dominant interest of the State in preventing violence and property damage can not be questioned. It is a matter of genuine local concern."

And (l. c. 274-275):

> "The States are the natural guardians of the public against violence. *It is the local communities that suffer*

most from the fear and loss occasioned by coercion and destruction. We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect." (Emphasis supplied.)

Certainly, in the Laclede strike of 1956 it was the St. Louis community which suffered. It was not a national emergency, but it was a local emergency. An increasing portion of the inhabitants of St. Louis were totally without gas; destruction of lives and property were real possibilities. In this situation the Governor of Missouri found a local emergency, declared the same, and acted pursuant to the state act requiring the existence of a local emergency for its application. Surely, §§ 295.180 and 295.200 (1) and (6), are enactments of the Missouri legislature pursuant to its police power to preserve local peace and order and as such must stand just as did the state action in the violence cases.

C. The Inspection and Quarantine Cases Under the Commerce Clause Show That State Health and Safety Regulations May Validly Interfere With Federally Protected Activities.

By analogy to the inspection and quarantine cases under the commerce clause, Art. I, § 8, U. S. Const., it is clear that an activity is not exempted from the states' inherent power to preserve public health and safety merely because it is federally protected. Such laws in the interest of public health and safety may absolutely exclude certain products or articles from interstate commerce, **Morgan's Steamship Co. v. Louisiana Board of Health**, 118 U. S. 455 (1886), (upholding a state law requiring all ships to pass a sanitary inspection before admission to the state's ports); **Asbell v. Kansas**, 209 U. S. 251 (1908), (upholding a state law excluding all cattle that had not been certified to be

free of certain diseases); **Reid v. Colorado**, 187 U. S. 137 (1902), (upholding a state law excluding diseased cattle).

This power to exclude injurious products is based on the state's inherent power to protect public health and safety, not on the theory that diseased or contaminated products are not legitimate articles of commerce. See, **Compagnie Francaise de Navigation a Vapeur v. Louisiana State Bd. of Health**, 186 U. S. 380 (1902), where it was held that the state had the power to prohibit healthy persons from entering diseased areas of the state. Of course common sense necessitates this result, yet the plain policy of the commerce clause prohibits all state control over the question of which products are legitimate items of interstate commerce, **Leisy v. Hardin**, 135 U. S. 100 (1890), (holding that a state could not exclude alcoholic beverages because of its notion of a sound social policy). Thus, when the public health and safety is endangered, it is clear that a state can absolutely exclude certain products even though it interferes with the free flow of goods which the commerce clause protects. Of course the state cannot misuse this power, and the courts are always open to determine whether a particular state law is really a bona fide health and safety measure, or a veiled attempt to regulate commerce, **Hannibal & St. J. R. Co. v. Husen**, 95 U. S. 465 (1878); **Minnesota v. Barber**, 136 U. S. 313 (1890).

In the present case this Court is asked to construe § 7 of the L. M. R. A., which merely protects the right to strike in the same way that the commerce clause protects the free flow of goods in interstate commerce, as invalidating an emergency state law which protects public health and safety. In **Asbell v. Kansas**, 209 U. S. 251, at 256 (1908), it was pointed out that the mere fact that an article is part of the protected flow of interstate commerce does not exempt it from state health regulations:

"These general principles control the decision of the case at bar. Cattle, while in the course of transportation from one state to another, *and in that respect under the exclusive control of the law of the national government, may, at the same time, be the conveyance by which disease is brought within the State to which they are destined, and in that respect subject to the power of the State, exercised in good faith to protect the health of its own animals and its own people.*" (Emphasis supplied.)

Certainly the fact that Congress, instead of the Constitution, grants the protection is not a rational ground for concluding that the mere extension of protection excludes the bona fide exercise of state health and safety measures.

The quarantine cases also illustrate that state interference with a federally protected activity will often be permitted when it is designed to protect the public health, safety or welfare, whereas it will not be tolerated when the state law is a general police regulation based on the economic policy of the state legislature. This vital distinction was pointed out in **Buck v. Kuykendall**, 267 U. S. 307 (1925), in the following language (l. c. at 315):

"It may be assumed that § 4 of the state statute is consistent with the Fourteenth Amendment; and also, that appropriate state regulations, adopted primarily to promote safety upon highways and conservation in their use, are not obnoxious to the Commerce Clause, where the indirect burden imposed upon interstate commerce is not unreasonable. * * * The provision here in question is of a different character. *Its primary purpose is not regulation with a view to safety or to conservation of the highways, but the prohibition of competition.*" (Emphasis supplied.)

This analogy demonstrates that a great deal more interference with a federally protected activity will be allowed when the state law is a measure to protect public health, safety or welfare rather than a general economic or labor regulation under its police power. This fact is significant because the seizure-no-strike provisions of the King-Thompson Act are designed to protect the public health, safety and welfare in an emergency rather than to regulate the labor affairs of the community as the state statutes did in cases such as **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, 340 U. S. 383 (1951); and **Hill v. Florida**, 325 U. S. 538 (1945).

D. The Right to Strike, Like Other Rights, Is Not Absolute But Is Subject to State Regulation for the Protection of Public Health and Safety.

The basic question in all pre-emption cases is whether Congress intended the federal statute in question to pre-empt the entire field so completely as to exclude all state law applicable to the subject. This intent of course can be gathered from many sources, but one of the basic sources is still the Congressional choice of language in the statute, **United States v. American Trucking Association, Inc.**, 310 U. S. 534, 543 (1940). It is normally understood that a word used in a statute should be given its usual and accepted connotation unless a contrary intent is evidenced by the legislature. In § 7 of the L. M. R. A. Congress provided that "Employees shall have the *right* to . . . engage in other concerted activities for the purpose of collective bargaining." (Emphasis supplied.)

Congress by selecting the word "right" in § 7 chose a word with many connotations, but there is one universally understood limitation attached to the word, and this is that a "right" which involves conduct is never absolute but "remains subject to regulation for the protection of society," **Cantwell v. Connecticut**, 310 U. S. 296, 304 (1940).

Thus it is an elementary principle of law that even the most basic rights, such as freedom of speech, are subject to some limitation by the police power in the interest of public health, safety and welfare, **Gitlow v. New York**, 268 U. S. 652 (1925); **Whitney v. California**, 274 U. S. 357 (1927). As Justice Holmes put it with characteristic clarity, no one has the right to shout fire in a crowded theater, **Schenck v. United States**, 249 U. S. 47, 52 (1919).

This principle that rights are not absolute is especially cogent when the public health or safety is threatened. Many severe restraints will be tolerated in such cases. This Court in **Jacobson v. Massachusetts**, 197 U. S. 11 (1905), while sustaining compulsory vaccination in the interest of the public health, stated this basic principle in the following language (197 U. S. at 26):

> "But the liberty secured by the Constitution of the United States to every person within its jurisdiction does not import an absolute right in each person to be, at all times and in all circumstances, wholly freed from restraint. There are manifold restraints to which every person is necessarily subject for the common good. On any other basis organized society could not exist with safety to its members. Society based on the rule that each one is a law unto himself would soon be confronted with disorder and anarchy. Real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own, whether in respect of his person or his property, regardless of the injury that may be done to others."

Likewise in the interest of public health this Court has sustained the severe restraint of sterilization, **Buck v. Bell**, 274 U. S. 200 (1927).

These are striking illustrations of the principle that the most basic human rights are subject to the states' essential

power to protect the public health, safety and welfare. These cases have nothing to do with the pre-emption doctrine as such, but they do illustrate the commonly understood limitations on the word "right" which Congress chose to use in § 7 of the Taft-Hartley Act. Since Congress must be presumed to have been aware of these common limitations on all "rights", it is rather difficult to see how it can be argued that Congress by protecting the "right" to strike in § 7 of the Taft-Hartley Act intended to deny to the states their power to control the exercise of this "right" in order to protect public health, safety and welfare in an emergency.

The Congressional choice of the word "right" rationally explains why this case, which involves emergency legislation designed to protect local public health and safety when they are jeopardized, differs from the prior cases such as **Amalgamated** and **O'Brien** which held that general state laws which interfere with "rights" protected by § 7 are invalidated. The difference is simply that the word "right" implies that the individual shall be free to engage in the activity in question except when it endangers the public health, safety or welfare. Therefore, it follows that Congress by using the word "right" in § 7 may have manifested an intention to preclude all state laws which limit or restrict the exercise of the "right", but not those emergency state police laws which protect public health, safety and welfare, since all "rights" are historically subject to these measures.

This Court has recognized that the "right" to strike which is now protected by § 7 is not absolute. Thus in **Southern S. S. Co. v. N. L. R. B.**, 316 U. S. 31 (1942), it was held that there was no right to strike in violation of the federal mutiny law. In **International Union v. Wisc. Empl. Rel. Bd.**, 336 U. S. 245 (1949), this Court used language which implied not only that the right to strike is

not absolute, but also that its exercise is subject to state law (l. c. at 259):

> "The right to strike, because of its more serious impact upon the public interest, is more vulnerable to regulation than the right to organize and select representatives for lawful purposes of collective bargaining which this Court has characterized as a 'fundamental right' and which, as the Court has pointed out, was recognized as such in its decisions long before it was given protection by the Labor Relations Act."

The holdings in the **Amalgamated** and **O'Brien** cases make it clear, however, that it is incorrect to infer from the foregoing language that general state police laws which interfere with the right to strike will be sustained. These holdings, nevertheless, do not effect the recognition of the basic principle that the right to strike is not absolutely immune from all state laws. The recognition of this principle in the **International Union** case and the holdings in the **Amalgamated** and **O'Brien** cases can be reconciled in this case by the holding that Congress intended to preempt the field so as to bar all state laws which interfere with the right to strike except those which protect the public health and safety.

It would be perilous to ascribe an intent to Congress to invalidate state laws protecting the public in emergencies in the absence of any federal provision to protect the public in lieu of the state law. Finding such a Congressional intent would be tantamount to saying that Congress intended to make the "right" to strike more absolute than the basic human rights of freedom of speech and press. The cases above like **Gitlow v. New York**, 268 U. S. 652 (1925), and **Whitney v. California**, 274 U. S. 357 (1927), show that these basic human rights are subject to state police regulations which are designed to protect the public, yet the appellants are asking this Court to hold that Con-

gress, without taking any steps of its own to protect the public in local emergencies, intended to create a "right" to strike absolutely immune from the states' power to protect the public health, safety and welfare. Such an interpretation would not only ignore the historic limitations of the word "right", but would also ascribe to the Congress of the United States a callous disregard for the public health and safety of the citizens of the individual states. For these reasons it is abundantly clear that Congress in protecting the "right . . . to engage in concerted activities for the purpose of collective bargaining" did not intend to invalidate state police measures designed to protect the public in an emergency.

The recognition that the Taft-Hartley Act does not through pre-emption bar the exercise of emergency state police powers to protect public welfare, though such exercise does in fact impinge upon the right to strike, need not open the way to indiscriminate state encroachment upon the rights protected by the Taft-Hartley Act. Although it would not in this brief be proper to attempt a detailed exploration of the permissible limits on the states' exercise of their police power in areas protected by the Taft-Hartley Act, the cases dealing with the basic human "rights" show that there are very real limitations upon the competence of the police power in areas subject to federal control. Limitations applied in the same spirit in the labor pre-emption field would be a completely effective check on the states' ability through the use of their police power to interfere with the substantive "rights" protected by § 7. As pointed out above in the commerce clause cases, the first limitation is always whether the state law is a real police measure designed to protect health and safety, or whether it is a mere sham to hide a state regulatory measure, **Hannibal & St. J. R. Co. v. Husen**, 95 U. S. 465 (1878). The sections of the King-Thompson Act here involved are clearly bona fide health and safety regu-

lations because they are limited to public utilities which have monopolistic control over services essential to the public health and welfare and because they require the existence and declaration of an actual emergency before their provisions here involved can be invoked.

The human "rights" cases, moreover, show that there are more affirmative limitations on police regulations of the basic freedoms than this type of test of bona fides. Thus, by way of illustration, general licensing requirements which tend to create a prior restraint on the exercise of a freedom protected by the Fourteenth and First Amendments are held to be invalid even though they are enacted under the states' police power. **Thomas v. Collins,** 323 U. S. 516 (1945) (free speech); **De Jonge v. Oregon,** 299 U. S. 353 (1937) (peaceful assembly); **Cantwell v. Connecticut,** 310 U. S. 296 (1940) (religion). The first of these cases used the following language to describe the only occasion upon which the police power would be justified in imposing a prior restraint on the exercise of these freedoms (323 U. S. at 530):

> "These rights rest on firmer foundation. Accordingly, whatever occasion would restrain orderly discussion and persuasion, at appropriate time and place, *must have clear support in public danger, actual or impending.* Only the gravest abuses, endangering paramount interests, give occasion for permissible limitation." (Emphasis supplied.)

These cases which illustrate the very limited occasion—immediate threat to the public health, safety or order—when the state is justified in imposing a prior restraint on the exercise of some of the basic individual freedoms are instructive of another difference between the King-Thompson Act and the Wisconsin Act which this Court struck down in the **Amalgamated** case. The Wisconsin statute imposed a prior and absolute restraint on the "right" to

strike in the public utility industry. On the other hand, the sections of the King-Thompson Act here involved do not impose any such prior restraint on the "right" to strike, but only prohibit the strike after the governor has found that the public health and welfare are in jeopardy, and after the seizure to the use of the state, §§ 295.180, 295.200 (1), R. S. Mo. 1949. The governor's finding that there is an immediate threat to the public health and welfare is precisely the situation which justifies police interference with the rights protected by § 7. Compare, **Thomas v. Collins**, 323 U. S. 516 (1945).

Further illustration of the potential limits on the states' power to interfere with protected rights would be superfluous. These analogies demonstrate that there are enough potential limitations on this power so that state laws which protect the public in an emergency can safely be allowed to restrict the exercise of a § 7 "right" without in any way jeopardizing the essence of the "right", to strike which Congress has protected. For these reasons it is obvious that Congress by selecting the word "right" in § 7 of the L. M. R. A. clearly showed that it did not intend to exclude the exercise of the police power of the states to protect the public health, safety and welfare in emergencies.

E. The Doctrine of Federal Pre-emption Does Not Apply to a State Police Measure Which Protects Public Health and Safety Unless There Is a Compelling Congressional Direction to That Effect.

In attempting to maintain the delicate balance between legitimate state and federal interests this Court has consistently followed the principle that a federal statute will not be construed as precluding a valid state regulation under its police power unless the Congressional intent to replace the state law is unquestionably demonstrated, **Reid v. Colorado**, 187 U. S. 137, 148 (1902); **Mintz v. Baldwin**,

289 U. S. 346, 350 (1933); **Kelly v. Washington**, 302 U. S. 1, 13 (1937); **Savage v. Jones**, 225 U. S. 501, 533 (1912); and other cases collected in Mr. Justice Frankfurter's dissent in **Hill v. Florida**, 325 U. S. 538, 549-552 (1945).

This principle that state police measures are not superseded unless it is obvious that Congress intended that result is often expressed without differentiation as to the particular reason for the exercise of the states' police power. There have, however, been occasions where this Court has had opportunities to point out that the Congressional intent to supersede state health and safety regulations must be even more clearly demonstrated than the intent to supersede just any state police measure.

Illustrative of this more strict application of the rule is the case of **Maurer v. Hamilton**, 309 U. S. 598 (1940), where this Court held that the Motor Carrier Act of 1935 did not preclude by pre-emption the operation of a Pennsylvania statute prohibiting motor carriers from hauling cars on the top of their truck cabs because the practice was dangerous on the steep grades of the Pennsylvania highways. The court reached this result by applying the rule that a state safety regulation should be pre-empted only when no other interpretation of the federal statute was possible (309 U. S. at 614):

> "As a matter of statutory construction congressional intention to displace local laws in the exercise of the commerce power is not, in general, to be inferred unless clearly indicated by those considerations which are persuasive of the statutory purpose. *This is especially the case when public safety and health are concerned.*" (Emphasis supplied.)

Since the King-Thompson Act is a police measure to protect public health, safety and welfare in an emergency, and since the L. M. R. A. does not show an unequivocable

Congressional intent to replace these local laws, it follows that this case fits within the usual rule that a state police regulation for the protection of the public will not be deemed invalidated by pre-emption unless the Federal statute permits of no other construction. This Court has applied this principle to the Taft-Hartley Act in the violence cases, discussed above, by holding that act not to have so pre-empted the field as to deny validity to state laws or court action designed to protect the public by curbing violence, there being no compelling Congressional direction to this effect, **Allen-Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 740 (1942); **United Auto Workers v. Wisconsin Empl. Rel. Bd.**, 351 U. S. 266 (1956). The difficulty, of course, is in establishing that this cohesive principle of law applies to state laws which protect health and safety by preserving essential utility services in emergencies as well as those which protect health and safety by curbing violence. The landmark pre-emption cases cited above dispel this difficulty by showing that the important correlation in deciding whether Congress intended to preclude a given state law is whether such law is a bona fide health, safety or welfare measure, not whether it acts on work stoppages in vital public utilities imperiling the public safety and welfare instead of on violence.

F. The Legislative History of the L. M. R. A. Shows That Congress Did Not Intend to Deny to the States Authority to Enact State Emergency Legislation Protecting Public Health, Safety and Welfare Even Though Such State Legislation Impinges Upon Protected Activities.

There has been no "compelling directions" from Congress "to leave [the states] powerless to avert • • • emergencies". **United Auto Workers v. Wis. Empl. Rel. Bd.**, 351 U. S. 266, at 275 (1956). "[A]n 'intention of Con-

gress to exclude states from exercising their police power must be clearly manifested'," **Allen-Bradley Local v. Wisconsin Employment Relations Board**, 315 U. S. 749, at 749. (1942).

Congress did not consider the local emergency situation in its debates preceding the passage of the Taft-Hartley Act. Nowhere in the reports of the debates in the Congressional Record can mention of local emergencies be found. This fact alone, since a Congressional intent to exclude a state's exercise of its police powers must be clearly manifested, should be sufficient to show that the states' police powers to preserve local health and safety by action aimed only at local emergencies has not been destroyed by passage of the Taft-Hartley Act.

Title II of the Taft-Hartley Act additionally shows, however, that Congress contemplated that the right to strike could and would be curtailed where a strike created an emergency. Section 178 of the Act provides that the Government may obtain an injunction for eighty days against a strike or lockout which, "if permitted to occur or to continue, will imperil the national health or safety". After expiration of the period of the injunction, according to Senator Taft (93 Cong. Rec. 3835, 1947):

> "If there finally develops a complete national emergency threatening the safety and health of the people of the United States, Congress can pass an emergency law to cover the particular emergency."

This limitation on the right to strike was recognized and accepted despite Congressional allegiance to the concept of free collective bargaining as expressed by Senator Taft, who said (93 Cong. Rec. 3835, 1947):

> "Basically, I believe that the committee feels, almost unanimously, that the solution of our labor

> problems must rest on a free economy and on free collective bargaining. * * * We recognize that right in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right."

Only naturally the discussion of the problem of strikes or lockouts creating emergencies was limited to those strikes creating national emergencies. The Senate Report on the bill which became the Taft-Hartley Act, S. Rep. No. 105, 80th Cong. 1st Sess., at page 14 states:

> "While the committee is of the opinion that in most labor disputes the role of the Federal Government should be limited to mediation, we recognize that the repercussions from stoppages in certain industries are occasionally so grave that the national health and safety is imperilled. An example is the recent coal strike. . . ."

Congress thus had in mind the crippling post World War II national strikes. Naturally Congress was only concerned with the "role of the Federal Government" in these strikes. As stated in the Senate Report, l. c. at 14, "only in national emergencies . . . should the Federal Government be armed with power" to enjoin.

Is it not a reasonable inference from the Senate Report that Congress did not consider the local emergency because the local emergency is the concern of the state rather than the national government? The fact, furthermore, that Congress rejected seizure for national emergencies does not mean that such procedure was rejected for the states in local emergencies. Different considerations are involved in the two different types of emergencies. Because seizure might not be appropriate for a national emergency does not mean it is also inappropriate for local emergencies. The legislative history of the Taft-Hartley Act thus does

not reveal a Congressional intention to destroy state police power over local emergencies.

Counsel for appellants would have us believe, however, that in some way the defeat of Senator Holland's amendment to the Labor Management Reporting and Disclosure Act of 1959, Public Law 86-251, and the passage of that part of the Act having to do with the National Labor Relations Board's jurisdiction should affect this Court's construction of the Taft-Hartley Act. The amendment proposed by Senator Holland insofar as pertinent provided (105 Cong. Rec. 6037, 1959):

> "Nothing in this Act or the Labor-Management Relations Act, 1947, shall be construed to nullify the provisions of any State or Territorial law which regulate or qualify the right of employees of a public utility to strike, or which prohibit strikes by such employees."

The amendment was obviously designed, as Senator Holland pointed out, to overrule the **Amalgamated** decision in its fullest scope.[1] This is exactly why the amendment's rejection has no bearing on the present case. The instant case presents a question with which neither the **Amalgamated** decision nor the amendment to overrule it was concerned. The amendment would have overruled the **Amalgamated** decision, which held that general state laws

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[1] The appellants, at page 27 of their brief, rely on Senator Holland's interpretation of the *Amalgamated* decision to show that the states were left without "any power at all . . . . to keep their utilities running" (105 Cong. Rec. 6037, 1959). Whatever value his amendment may have in showing Congressional intent, it is clear that Senator Holland's remarks have no effect at all as an authoritative interpretation of the *Amalgamated* case which is the province of this court. Since it is clear that the *Amalgamated* decision does not preclude "emergency" state action to protect health and safety, the amendment proposed by Senator Holland was too broadly drawn.

aimed at regulating labor relations in public utilities are by pre-emption forbidden to interfere with the right to strike. The amendment would of course have allowed the states to regulate labor relations, and thereby substitute their judgment for the process of collective bargaining selected by Congress. The rejection of this broadly drawn amendment, therefore, in no way shows that Congress now feels that the exercise of a § 7 "right" is immune from state health and safety laws.

The Reporting and Disclosure Act, furthermore, concerned union reform and the National Labor Relation Board's jurisdiction, matters not even remotely involved in this action. Senator Holland's unrelated amendment was introduced in the heat of debate on the primary features of the proposed legislation and was furt. r offered without benefit of a committee hearing or report. It was defeated in a body, many of whose members, including Senator Kennedy who spoke against the Holland amendment, were not even in the Senate at the time of Taft-Hartley's passage.

This Court in **United States v. United Mine Workers of America**, 330 U. S. 258 (1946), had a like argument as to the effect of subsequent legislation presented to it. It was urged that the statements of certain Senators made in the debate on the War Labor Disputes Act should be determinative that Congress concurred in a judicial construction of the Norris-LaGuardia Act, passed some eleven years earlier. This Court stated (l. c. at 281-282):

> "We have considered these opinions, but cannot accept them as authoritative guides to the construction of the Norris-LaGuardia Act. They were expressed by Senators, some of whom were not members of the Senate in 1932, and none of whom was on the Senate Judiciary Committee which reported the bill. They were expressed eleven years after the Act was passed

and cannot be accorded even the same weight as if made by the same individuals in the course of the Norris-LaGuardia debates. Moreover, these opinions were given by individuals striving to write legislation from the floor of the Senate and working without benefit of hearings and committee reports on the issues crucial to us here. *We fail to see how the remarks of these Senators in 1947 can serve to change the legislative intent of Congress expressed in 1932* and we accordingly adhere to our conclusion that the Norris-LaGuardia Act did not affect the jurisdiction of the courts to issue injunctions when sought by the United States in a labor dispute with its own employees." (Emphasis supplied.)

The legislative history of the Taft-Hartley Act thus shows no Congressional intention to pre-empt the legislative field so as to invalidate state police regulations designed to protect the public health and safety in an emergency.

II.

A Public Utility Strike Which Creates an Emergency That Threatens the Public Health and Safety Is Neither Protected Nor Prohibited by the Taft-Hartley Act; Hence the State Is Free to Regulate It.

In the first portion of this brief it has been assumed, for the sake of argument, that the conduct of the appellants in this case constituted a "peaceful strike for higher wages"; conduct which this court has held is a protected activity under §§ 7 or 13 of the L. M. R. A., **Amalgamated Association v. Wisconsin Empl. Rel. Bd.**, 340 U. S. 383, 394 (1951); **International Union of U. A. W. v. O'Brien**, 339 U. S. 454, 457 (1950). This assumption was made, however, only to facilitate the argument that Congress by pro-

tecting a "right" under §§ 7 and 13 did not intend to preclude by pre-emption state police measures which restrict that "right" in order to protect the public health, safety and welfare in an emergency. That view affords a sound basis for affirming this decision. It is believed, however, that it is equally true that a strike which creates a local emergency that threatens the public health and safety is "neither protected nor prohibited" by the L. M. R. A. and is, therefore, left to the states to regulate under the doctrine of **International Union of U. A. W. v. Wisconsin Empl. Rel. Bd.**, 336 U. S. 245 (1949). See also **N. L. R. B. v. Fansteel Metallurgical Corp.**, 306 U. S. 240 (1939).

A. A Strike Which Creates a State Emergency Is After State Seizure No Longer Protected by Either §§ 7 or 13 Because It Ceases to Be a "Peaceful" Strike.

When the Governor of Missouri, acting pursuant to legislative authority, has found that a strike threatens the "public interest, health and welfare" and has taken possession of a local public utility "for the use and operation by the State of Missouri in the public interest", § 295.180 (1), R. S. Mo. 1949, the strike is thereafter no longer a peaceful strike. As mentioned above this Court has held that the Wagner and Taft-Hartley Acts were not intended to usurp from the states their "historic powers of such traditionally local matters as public safety and order and the use of the streets." **Allen Bradley Local v. Wisconsin Empl. Rel. Bd.**, 315 U. S. 740 (1942). How then can it be successfully urged that Congress by its silence intended to leave the states impotent to maintain the safety and welfare of their citizens in the procurement of the supply of gas declared by the state legislature to be one of the "life essentials of the people"? § 295.010, R. S. Mo. 1949.

Surely if the power to prevent mass picketing, threats, blocking of entrances and of streets is left in the states by

the Taft-Hartley Act; if the violence and trespass of "sit-down" strikes is unprotected by the Taft-Hartley Act; and if intermittent unannounced work stoppages may be enjoined by state action—then surely Congress has left to the states the right and power to prevent the catastrophic effect of strikes or lock-outs in local public utilities which in the opinion of the state's highest elective official threaten "the public interest, health and welfare." This would seem to be the case "governable by the state or it is entirely ungoverned," **International Union, U. A. W. v. Wisconsin Empl. Rel. Bd.**, 336 U. S. 245 at 254 (1949).

Strikes or lock-outs which can shut off water, gas or electricity, when they are found by the Governor to threaten the public interest, health and welfare, cease being peaceful strikes. They jeopardize the people of the state far beyond the effect of "sit-down" or picket-line violence. The effect of the Governor's proclamation that the strike or lock-out so threatens the people and that the state is taking possession of the utility for the use by the state in public interest is tantamount to a declaration that henceforth a strike or lock-out will no longer be peaceful but that it will threaten the peace of the people of the state. This threat to the public when coupled with the quasi-public nature of utilities and the states' traditional control and regulation thereof all militate against a construction of the Taft-Hartley Act finding implicit therein an intent of Congress to pre-empt from the states their ultimate right and duty of sovereignty, the maintenance of the interest, health and welfare of their citizens.

CONCLUSION.

For the reasons stated herein, amicus curiae respectfully submits that this Court should affirm the decision of the Supreme Court of Missouri, and hold that the seizure-no-strike provisions of the King-Thompson Act are

a constitutional exercise of the state's police power and are not in conflict with the National Labor Relations Act of 1935 as amended by the Labor Management Relations Act of 1947.

Respectfully submitted,

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1959.

No. 42.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al.,
Appellants,

vs.

STATE OF MISSOURI,
Appellee.

Appeal from the Supreme Court of the State of Missouri.

BRIEF

Of the Chamber of Commerce of Metropolitan St. Louis as Amicus Curiae.

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Appeal from the Supreme Court of the State of Missouri.

BRIEF

Of the Chamber of Commerce of Metropolitan St. Louis as Amicus Curiae.

By leave of Court, the Chamber of Commerce of Metropolitan St. Louis files this brief as *amicus curiae*.

THE INTEREST OF THE AMICUS CURIAE.

The Chamber of Commerce of Metropolitan St. Louis is a corporation organized under the laws of the State of Missouri and has as its purpose the promotion of the commercial, industrial, financial, business, cultural, educational and civic interests and the general welfare of the public of St. Louis and of the St. Louis metropolitan area. The *amicus* is not a pecuniary profit-earning corporation. It has as its members numerous firms and individuals representing the commercial, industrial, financial and business interests of the City of St. Louis.

The members of the St. Louis Chamber of Commerce are vitally interested in the outcome of this litigation. Many of the members are users of gas distributed by the Laclede

Gas Company in the City and County of St. Louis, Missouri, and are dependent upon it for the operation of their businesses. If the State of Missouri does not have the power, under certain emergency circumstances, to take possession of a public utility distributing gas to the many businesses located throughout the City and County of St. Louis, not only would many of these businesses be prevented from rendering to the community at large services which the community needs and desires, but also the very safety and existence of these businesses would be in jeopardy. Under the facts of this case, this *amicus* believes that a dangerous situation existed in the City of St. Louis which was of vital concern not only to the business interests of the community which have large investments in the form of physical facilities in the metropolitan area, but also to the public at large whose physical welfare was threatened. This condition necessitated the state action which was taken in this case.

Although this *amicus* believes that this case has become moot, that issue will not be discussed in this brief since the State of Missouri, appellee in this case, has adequately demonstrated the validity of that position. See brief for the appellee, State of Missouri, pages 11-14. This brief will confine its argument to the following propositions:

(1) Federal law has always recognized the power of the states to deal effectively with emergency situations involving labor disputes which affect interstate commerce;

(2) The facts of this case conclusively demonstrate that an emergency situation did exist in the City of St. Louis at the time the Governor proclaimed "that the public interest, health and welfare" were jeopardized and seized Laclede Gas Company;

(3) The Missouri law provided the only effective way in which the State could protect the welfare of the public in this emergency situation.

ARGUMENT.

I.

The Federal Law Has Always Recognized the Power of the State to Deal Effectively With Emergency Situations Involving Labor Disputes.

From **Allen-Bradley Local v. Wisconsin Employment Relations Board,** 315 U. S. 740, to the recent "landmark" case of **San Diego Building Trades Council v. Garmon,** 359 U. S. 236, 250, this Court has always recognized that the states have the power to act under their historic police power in labor disputes affecting interstate commerce where an emergency situation exists. The **Garmon** case contains the most recent exposition of the Court's thinking in "pre-emption" cases in the labor field. Both the majority opinion, written by Mr. Justice Frankfurter, and the concurring opinion, written by Justice Harlan, recognize the power of a state to exercise its authority over a labor dispute in case of an emergency such as the one which existed in this case. As the majority opinion pointed out, "Where the regulated conduct touched interests * * * deeply rooted in local feeling and responsibility", this Court will "not infer that Congress had deprived the State of the power to act" 359 U. S. at page 244. And, as the concurring opinion points out, there is no pre-emption unless the conduct involved "is, or may fairly be regarded as, federally protected activity" Id. at page 250. The concurring opinion goes on to cite "violence" cases as instances in which union activity has been held to be not federally protected, and warns against limiting "the ability of States to furnish an effective remedy under their own laws" or reducing the State power to act "to the vanishing point." Id. at pages 253, 254.

In **Allen-Bradley**, supra, an emergency situation existed, and this Court held that the activity there involved was not protected and that the State had the right under its police power to control that activity. In that case, the Wisconsin Employment Relations Board had ordered the union and its members to cease and desist from mass picketing threatening employees obstructing and interfering with factory entrances, and obstructing and interfering with the free use of the public streets, roads and sidewalks. This activity of the union created an emergency situation which threatened the welfare of the citizens of Wisconsin. There, as here, the union contended that the National Labor Relations Act pre-empted state jurisdiction over the conduct involved. Recognizing the State's obligation to maintain peace in the community and to protect the welfare of its people, this Court held that the Federal Act did not preclude a state from enacting legislation designed to meet this obligation. The **Allen-Bradley** opinion pointed out that "this Court has long insisted that an 'intention of Congress to exclude states from exerting their police power must be clearly manifested'." **Allen-Bradley v. Wisconsin Employment Relations Board**, 315 U. S. 740, 749, quoting with approval from **Napier v. Atlantic Coast Line R. R. Co.**, 272 U. S. 605, 611.

The Federal statutes dealing with labor management relations certainly do not manifest an intention by Congress to prevent the states from exercising their historic police power. On the contrary, the Labor Management Relations Act of 1947, 29 U. S. C., Sections 141 et seq., expressly recognizes the need for action in emergency situations. The Act permits strikes to be enjoined when the "national health or safety" is imperiled. 29 U. S. C., Sec. 176-178. Surely, a Congress which gave the Federal Government the power to act in national emergencies to protect the national health and safety did not intend to leave the State powerless in

local emergencies involving local disputes to protect the health and safety of a locality.

In **International Union v. Wisconsin Employment Relations Board,** 336 U. S. 245, this Court upheld the power of a State to order a Union to cease and desist from instigating certain intermittent and unannounced work stoppages. In so doing, the Court stated that in both the National Labor Relations Act and the Labor Management Relations Act of 1947 "'Congress designedly left open an area for state control'" and that "'the intention of Congress to exclude states from exerting their police power must be clearly manifested.'" Id. at page 253, quoting with approval from **Allen-Bradley v. Wisconsin Employment Relations Board,** 315 U. S. 740, 750, 749. If Congress left open an area which permits the states to enjoin intermittent work stoppages, *a fortiori*, if left open an area which permits the states to enjoin strikes which jeopardize the local public health and welfare.

Again, in the **United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board,** 351 U. S. 266, this Court upheld the power of the State of Wisconsin to enjoin mass picketing and interference "with the free and uninterrupted use of public ways." Id. at pages 268-269. In so doing the Court pointed out that the States "are the natural guardians of the public against violence. It is the local communities that suffer most from the fear and loss occasioned by coercion and destruction. We would not interpret an Act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect." Id. at pages 274-275. These words are particularly appropriate to the case at hand.

By the time of **Youngdahl v. Rainfair, Inc.,** 335 U. S. 131, the thrust of the rule announced in **Allen-Bradley** and reiterated in **International Union** and **United Automobile**

had been so thoroughly recognized that it was conceded in that case that the State had the right under the police power to enjoin the acts of violence there involved. Id. at page 138. In **Youngdahl** the threat to the state public welfare consisted of scattering roofing tacks on the company's parking lot, threats to company employees, puncturing automobile tires, and other acts of violence. Although these acts certainly were a threat to the public and were properly enjoined, they were in no sense as great a threat to the security of the public as were the acts involved in the case at hand, which involved not only the escaping of gas and the existence of gas fires, but also involved a threat to the operation of hospitals in the St. Louis area which used gas for sterilization, hot water heating, cooking and space heating (R. 346).

Thus, this Court has reiterated time and again the proposition that the states have the power to deal effectively with labor disputes involving emergency situations even though interstate commerce may be involved. Even a casual reading of **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board**, 340 U. S. 383, the case upon which appellants exclusively rely, demonstrates that its holding is not to the contrary. State action in that case was not premised on an emergency situation. On the contrary, the State acted merely because a strike was threatened in a public utility, and the "Public Utility Anti-Strike 'Law'" of Wisconsin specifically prohibited strikes by public utilities. As this Court pointed out, the Wisconsin act was not "'emergency' legislation but a comprehensive code for the settlement of labor disputes between public utility employers and employees. Far from being limited to 'local emergencies,' the act has been applied to disputes national in scope, and the application of the act does not require the existence of an 'emergency.'" Id. at pages 393, 394. Moreover, the facts of **Amalgamated**

show that no emergency existed. The strike was enjoined before it had even begun and before any threat to the public health and welfare existed.

The case at hand is remarkably different from **Amalgamated.** The state law here involved, the King-Thompson Act, does not permit state action unless "the public interest, health and welfare are jeopardized." Mo. Rev. Stat., Sec. 295.180 (2). As the State of Missouri has pointed out in its brief, it is of special significance that in only seven of twenty-three strikes involving public utilities has the state law been invoked and the utility seized, and then it was invoked only after a finding that the public interest, health and welfare were jeopardized. See the appendix to the brief of the appellee, pages 35-39. These facts demonstrate that the law under attack here is not a "Public Utility Anti-Strike Law". It is a law which allows the State to act in emergency situations involving public utilities. The Supreme Court of Missouri has held that the King-Thompson Act "is strictly emergency legislation and is not a comprehensive code for the settlement of labor disputes in utilities" as the Wisconsin Act was (R. 353). See **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board,** 340 U. S. 383, 393-394. That interpretation by the Missouri Supreme Court of the Missouri Act is binding on this Court. **Allen-Bradley v. Wisconsin Employment Relations Board,** 315 U. S. 740, 747, and cases there cited.

Thus, the prior decisions of this Court have not precluded, but in fact have allowed, state action in emergency situations. Such action is authorized both because it touches an "interest . . . deeply rooted in local feeling and responsibility" and because the activity in question is not a "federally protected activity." See **San Diego Building Trades Council v. Garmon,** 359 U. S. 236, 244, 250.

II.

The Facts of This Case Show an Emergency Situation Justifying State Action.

On July 1, 1956, Laclede Gas Company had approximately 2,500 employees. On that date 1,800 of these went on strike. From July 1 to July 10, the company received 13,000 calls complaining of "no gas" or failure of service or gas leaks (R. 39). Under normal conditions, Laclede Gas Company would usually receive something less than a hundred calls in a ten-day period (R. 39). At 6:20 P. M. on July 5, 1956, a bolt was thrown through the window of one of the sub-stations of the company. At 1:15 A. M. on July 6, the odor of gas was reported coming into the Forest Park office of the company. The odor was discovered to be the result of the throwing of a bottle of gas odorant through a window of that office (R. 40-41). At about the same time the city lighting department reported a gas leak was on fire. Mallinckrodt Chemical Company of St. Louis, which was doing work for the Atomic Energy Commission, complained of gas found in an inner tube in their laboratory (R. 41).

Reports were received indicating that water had been injected into the gas system at Laclede Gas Company. In one instance a gas meter was removed, the gas line was connected to a water line with a hose, and water was pouring through the water line into the gas line. Water in a gas line creates a serious safety problem because it causes a customer's gas to be temporarily shut off and after the water has passed, gas may come back on and escape through an outlet, thereby creating a dangerous condition (R. 45-46). In addition, a number of valves which control the service of gas to a large number of customers were shut off by unauthorized persons (R. 46-47).

On July 9, 1956, a gas fire was discovered in a manhole at Engler and Thomas Streets. This fire was brought under control but the Laclede Gas Company was unable to ascertain the source of the gas which was on fire because of a lack of personnel available to do this type of work (R. 48-49). Gas leaks in sewers are a considerable hazard because of the likelihood of a large scale explosion (R. 49).

Since July 1, on at least four occasions the long distance regulators of the Gas Company were out of service. At Station A of the Gas Company wires were disconnected from the main switch which operated the motors to the power pumps. This condition could allow gas to leak into the air which would create an explosive mixture, thereby increasing the danger of an explosion (R. 98-99). In one instance meters were taken away from an apartment house and later found in a pond in a city park. Another instance showed that the dials of the meters in another apartment house were damaged (R. 50).

There were numerous reports that gas odorant had been dropped by persons unknown throughout the city and county areas of St. Louis. This created a dangerous condition in two respects. First of all, residents of the area where gas odorant has been dropped could panic with fear over the possibility that there was gas actually escaping. Secondly, if gas did escape in an area where gas odorant had already been dropped, it would be impossible to detect the gas and this would increase the likelihood of a dangerous explosion (R. 50-51).

These facts clearly show the existence of an emergency situation. As the Court below stated, this evidence "was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the Governor issued his proclamation and execu-

tive orders" (R. 348). The Governor of a state has a great deal of discretion in emergency situations and his determination that there exists an emergency affecting the health and welfare of the public is entitled to great weight in this Court. **Moyer v. Peabody,** 212 U. S. 78; and see **Sterling v. Constantin,** 287 U. S. 378, 399, and cases there cited. Indeed, appellants in their brief do not even challenge the determination by the Governor that a state of emergency existed.

This Court has upheld state action in fact situations less compelling than those in the case at hand. This case involves more than the mass picketing and obstruction of the use of streets and sidewalks which the Court allowed the State of Wisconsin to enjoin in **Allen-Bradley Local v. Wisconsin Employment Relations Board,** 315 U. S. 740, and in **United Automobile, Aircraft and Agricultural Implement Workers of America v. Wisconsin Employment Relations Board,** 351 U. S. 266. It involves more, even, than the scattering of tacks on a company parking lot, the shouting of threats to company employees, and the puncturing of tires which the Court held that the State of Arkansas could enjoin in the case of **Youngdahl v. Rainfair, Inc.,** 355 U. S. 131. The facts of this case show a pervading emergency situation throughout the City and County of St. Louis, which threatened the safety, health and welfare of the people, and threatened the peace of the community at large. Surely, the State had the power to deal effectively with this dangerous condition.

III.

The Only Effective Way to Meet the Emergency Condition Which Existed Was to Invoke the Law Here Under Attack.

Nothing short of the seizure of the public utility here involved and the ordering of its employees back to work

could have successfully dealt with the emergency condition which was created by the strike. Every employee of the company was needed to meet the situation. Men were needed to ascertain the source of gas which had escaped into sewers (R. 49) and to answer some 13,000 calls from customers reporting no gas, failure of service, or gas leaks existing in the streets (R. 39). Moreover, the employees had possession of a majority of the keys which were used to open and shut gas valves and by calling the employees back to work, the state was able to eliminate the unauthorized shutting off of gas valves (R. 43-44, 46-47).

This was not a situation in which an injunction prohibiting the union from committing acts of violence would be sufficient to meet the emergency. See, e. g., **Youngdahl v. Rainfair, Inc.**, 355 U. S. 131. In this case, responsibility for the emergency situation could not be placed with the union (R. 348). Thus, an injunction solely against violent activity by the union would be ineffective. The only possible manner in which to cope with the situation was to get the employees back to work to deal with the flood of complaints and emergency conditions which arose after the union called the strike. In **Youngdahl**, what "violence there was was scattered in time and much of it was unconnected with the picketing." There was "nothing in the record to indicate that an injunction against such conduct would be ineffective if picketing were resumed." 355 U. S. 131, 139. In the present case, on the other hand, the emergency permeated the entire community and affected almost every citizen in St. Louis. The record shows conclusively that a partial injunction would be futile and that the entire work force of Laclede Gas Company was needed to cope with the situation.

In exercising its police power, the State has a wide area of discretion in dealing with emergency situations. Cf. **Moyer v. Peabody**, 212 U. S. 78; **Milk Wagon Drivers Union**

v. Meadowmoor Dairies, 312 U. S. 287, 295. There is nothing which "prevents a state if it so chooses from placing confidence in a chancellor's decree and compels it to rely exclusively on a policeman's club." **Milk Wagon Drivers Union v. Meadowmoor Dairies,** 312 U. S. 287, 295.

The state statute in question authorizes the Governor to take immediate possession of a public utility where the public interest, health and welfare are jeopardized. Mo. Rev. Stat., Sec. 295.180. When the utility has been seized it becomes unlawful for any person thereafter to participate in a strike of that utility. Mo. Rev. Stat., Sec. 295.200. If the employees refuse to go back to work after a public utility has been seized by the Governor, the courts of the State of Missouri have the power to order them back to work. Ibid. This statutory scheme for dealing with emergency conditions in public utilities is not arbitrary or unreasonable, but is, on the contrary, a sound and reasonable method of dealing with threats to the public welfare. This scheme is not too unlike the federal scheme for protecting the public health and safety in cases of a national emergency. See the Labor-Management Relations Act of 1947, 29 U. S. C., Sec. 176-178. This Court should not upset state action which is reasonably designed to meet the needs of its citizens, nor should this Court substitute its judgment for the judgment of the State in how the State may best meet threats to its general welfare. Cf. **Moyer v. Peabody,** 212 U. S. 78; **Milk Wagon Drivers Union v. Meadowmoor Dairies,** 312 U. S. 287, 295, 299.

CONCLUSION.

For the foregoing reasons this *amicus curiae* respectfully submits to the Court that the judgment of the Supreme Court of Missouri should be affirmed because the state action here involved does not conflict with federal law and

is a valid exercise of the state police power which was necessitated by emergency conditions existing in the City of St. Louis.

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In the Supreme Court of the United States

October Term, 1959.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*, *Appellants*,

vs.

STATE OF MISSOURI.

On Appeal from the Supreme Court of Missouri.

BRIEF OF MISSOURI STATE CHAMBER OF COMMERCE, THE CHAMBER OF COMMERCE OF KANSAS CITY, MISSOURI, THE MISSOURI FARM BUREAU FEDERATION, THE CHAMBERS OF COMMERCE OF ST. JOSEPH, SPRINGFIELD AND JOPLIN, MISSOURI, AS *AMICI CURIAE*.

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By leave of this Court the Missouri State Chamber of Commerce, the Chamber of Commerce of Kansas City, Missouri, the Missouri Farm Bureau Federation and the Chambers of Commerce of St. Joseph, Springfield and Joplin, Missouri, file this brief as *amici curiae*.

THE *AMICI CURIAE* AND THEIR INTEREST.

The Missouri State Chamber of Commerce; a non-profit membership corporation formed under the laws of Missouri, represents commercial, industrial, professional and civic interests throughout the entire State of Missouri. Its purpose and function is to serve the public interest as well as advancing and protecting the collective interests of its members. The Chamber of Commerce of Kansas City, Missouri, and the Chambers of Commerce of St. Joseph, Springfield and Joplin, Missouri, are similarly organized and represent varied commercial and industrial interests in their respective geographical areas. The Missouri Farm Bureau Federation is an agricultural cooperative organization whose members are interested in all phases of agriculture. The Missouri Farm Bureau Federation is integrated with local farm bureaus in small communities throughout Missouri.

The vast membership of *amici curiae* is vitally interested in this contest of the state's power to protect its interest, safety and welfare in a labor dispute. Largely possessed of business and commercial interests, these members are employers and suppliers of various services and products for our society. The injury caused to the public by the interruption of vital utility services, such as the supplying of natural gas, would be compounded through the attendant effect upon business and industry generally. Thus, the interest of *amici curiae* herein, in the validity of the state action in this case under the King-Thompson Act, is more advanced, though perhaps no less dear, than the interest of the general public.

Amici curiae realize the importance and necessity of collective bargaining in our social scheme and recognize the rights of employees to take peaceful concerted action to advance their own interest. Collective action is indeed a basic

tool of *amici curiae*, themselves. Nevertheless, collective action is not free from responsibility or restraint. The right of peaceful assembly does not grow into the right to riot, and the right to strike should not include the right to initiate or prolong a disruption of vital utility services to the extent that the public interest, health and safety would be jeopardized.

The parties to this dispute, in their briefs before the Supreme Court of Missouri, presented and argued a number of issues. *Amici curiae*, in this brief, is limiting its arguments to those critical issues relating (1) to whether the exercise of state power in averting a local emergency in this case conflicts with federal law and (2) of the distinction between this case and the decision of this Court in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364 (1951).

SUMMARY OF ARGUMENT

I.

A. The King-Thompson Act provides for mediation of labor disputes involving certain public utilities. Emergency relief, in the form of seizure and a subsequent strike ban, is available when the public interest, health and welfare are jeopardized. Section 295.180 Mo. Rev. Stat. (1949). In this protection of the public interest, the King-Thompson Act represents a natural exercise of the state's police power. The states have been called the "natural guardians of the public against violence." *United A. A. & A. I. W.* v. *Wisconsin Employment Relations Board*, 351 U. S. 266, 274 (1956). The King-Thompson Act merely enables the State of Missouri to effectively discharge these guardianship responsibilities.

B. The strike at the Laclede Gas Company, which led to this case, resulted in a serious and alarming interruption

of utility service. The Missouri Supreme Court, after reviewing evidence of sabotage, failure of gas service, fires and other perils, found from the evidence that the public interest, health and safety were jeopardized. The validity of the King-Thompson Act must be determined in relation to the emergency which requires its application. The constitutionality of the Act, in an abstract sense, is not an issue. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 746 (1942).

The right of states, to act in local emergencies arising from labor disputes affecting commerce, has been firmly established in the leading decisions on federal pre-emption. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; *United Construction Workers* v. *Laburnum*, 347 U. S. 656.

The state has a dominant interest in preventing violence and property damage. *United A. A. & A. I. W.* v. *Wisconsin Employment Relations Board*, 351 U. S. 266. State action has been upheld in a series of disputes involving violence, property damage and various forms of breaches of the peace. The instant case is not basically different, except that in it property damage and peril are greater, and the emergency more compelling.

C. The Court has frequently stated that the intention of Congress to exclude the states from exercising their police power must be clearly manifested. *United A. A. & A. I. W.* v. *Wisconsin Employment Relations Board*, 351 U. S. 266; *International Union UAW* v. *Wisconsin Employment Relations Board*, 336 U. S. 245. Congress has not expressed clear and patent directions to exclude state action in this field. Since states have a compelling and superior interest in the maintenance of local domestic peace, state jurisdiction in such matters should not be denied in the absence of such clear Congressional direction.

II.

The Missouri Supreme Court rightfully decided that the decision in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364 (1951), did *not* rule this case. Not only are the statutes quite different but the facts of the two cases, which laid the basis for invoking the statutes, are substantially different.

The Wisconsin Act provided for compulsory arbitration of disputes involving public utilities; the King-Thompson Act does not. The Wisconsin Act banned all public utility strikes; the King-Thompson Act does not. The Wisconsin Act was not "emergency" legislation and did not "require the existence of an emergency," *Amalgamated* case 340 U. S. at 393. Seizure under the King-Thompson Act is strictly emergency legislation, invoked but seven times since the passage of the Act, and requiring the Governor's proclamation that the public interest, health and welfare are jeopardized.

The instant case, as opposed to the situation in *Amalgamated*, involved an actual strike, utility service interruption, property damage, sabotage, fires and escaping gas. It is not the decision in *Amalgamated*, but "the type of conduct involved" that should control this case. See *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, where the Court stressed "the type of conduct involved" as being the determining factor for allowing state jurisdiction in *United Construction Workers* v. *Laburnum*, 347 U. S. 656.

ARGUMENT.

I.

The King-Thompson Act is a valid exercise of state authority.

A. The Statute governs an area over which the states are natural guardians.

The Missouri statute, which authorized the Governor of Missouri to seize the Laclede Gas Company and which brought about the end of a dangerous and emergent situation within the St. Louis area, appears as Chapter 295, Mo. Rev. Stat. (1949). This statute, popularly known as the King-Thompson Act, has been described as having two parts, one relating to mediation and the other to seizure.[1]

Mediation is accomplished through the State Board of Mediation created by the Act. The Board has power to attempt to mediate labor disputes in public utilities but has no power or authority to compel concession, to force a settlement or to arbitrate the issues in dispute.

Seizure is provided for in the Missouri Act, in Section 295.180, Mo. Rev. Stat. (1949), in part as follows:

> "* * * any strike, work stoppage or lockout which, in the opinion of the Governor, will result in the failure to continue the operation of the public utility, and threatens the public interest, health and welfare * * * and in that case he is authorized to take immediate possession of the plant, equipment or facility for the use and operation by the State of Missouri in the public interest."

Section 295.180.2 outlines the procedure under which the power and authority of the Governor to effect seizure

[1] Twelve years under the King-Thompson Act, page 3, published by Missouri State Board of Mediation (1959).

may be accomplished, and under this section the Governor is required to issue a proclamation after an investigation demonstrates that there is a threatened or actual interruption of the operation of the public utility and that the *public interest, health and welfare are jeopardized.*

Not all strikes in public utilities are made unlawful by the King-Thompson Act. The law merely provides that it becomes illegal to effect a strike or to continue a strike already in progress only after the Governor has made a finding that the public interest, health and welfare are jeopardized by the strike and after the utility involved has been seized.

In its opinion in this case, 317 S. W. 2d 309 (1958), the Supreme Court of Missouri comments as follows on the purpose of the King-Thompson Act:

> "The dominant purpose of the King-Thompson Act is the protection of the welfare and health of the people when threatened by the interruption of services of utilities operating under governmental franchise or permit or under governmental ownership and control. It is an exercise of the police powers of the state. Its provisions are directed against both the utility and its employees for the purpose of protecting the patrons and the public generally. While it makes mediation services and public hearing panels available, it does not force these services upon the parties. This is consistent with the policy of the Labor Management Relations Act, 1947. The Act does not purport to be a complete set of labor relation laws."

In this protection of the publice interest, health and welfare, the King-Thompson Act represents a natural exercise of the state's police power. Our society has become more complex and intricate, even since 1947 when Taft-Hartley was added to our federal labor legislation. The necessity of constant supply of certain vital utility

services, such as those covered by the King-Thompson Act (electric light or power, heat, gas, steam, water, sewer service, transportation excepting railroads, and communication) cannot be questioned. Failure of these services can immediately lead to grave public disorder, peril, and chaos. Truly, as stated in the policy of the Act (Section 295.010, Mo. Rev. Stat., 1949), the supply of these services are "life essentials of the people".

In *United A. A. & A. I. W. v. Wisconsin Employment Relations Board*, 351 U. S. 266, 274, 275, 100 L. Ed 1162 (1956), this Court stated "the states are the natural guardians of the public against violence. It is the local communities that suffer most from the fear and loss occasioned by coercion and destruction." Years ago, this Court in *Thornhill* v. *Alabama*, 310 U. S. 88, 105, 84 L. Ed. 1093 (1940), stated:

> "* * * The power and the duty of the State to take adequate steps to preserve the peace and to protect the privacy, the lives, and the property of its residents cannot be doubted." * * *

The power, indeed the duty, of the State of Missouri to take steps, by means of such emergency legislation as the King-Thompson Act, to protect the property and lives of its citizens, likewise cannot be doubted.

B. The National Labor Relations Act does not exclude all state power in industrial relations affecting commerce.

As Mr. Justice Frankfurter recently said, this "issue is a variant of a familiar theme."[2] The principal issue is whether the Missouri statute, relating to labor disputes in public utilities, so conflicts with and invades the field

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[2] *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775 (1959).

covered by the National Labor Relations Act that it must yield to that federal law.

The evidence in this case, as summarized by the Missouri Supreme Court (317 S. W. 2d 309, 317, 318), disclosed the existence of a bursting crisis. The strike began on July 1, 1956, and during the first ten days of its duration the situation had grown to be one of alarming peril to the public interest, health and welfare. The strike at the Laclede Gas Company was accompanied by several acts of sabotage. After reviewing the evidence, the court stated:

> "While the evidence is not sufficient to show that the defendants were responsible for these acts of sabotage which helped bring on the emergency, it was sufficient to prove that there was a serious and alarming interruption of utility service and the public interest, health and safety were jeopardized. This was the setting in which the governor issued his proclamation and executive orders."

The validity of the judgment and decree of the St. Louis Circuit Court, affirmed by the Missouri Supreme Court, *en banc*, must be determined under the facts of the case before us. The validity of the King-Thompson Act in an abstract sense is not an issue. Whether state action, to restrict the strike in this case, may be permitted to stand must be determined against the background of the facts involved in this case. In *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 746, 86 L. Ed. 1154 (1942), this Court said:

> "We deal, however, not with the theoretical disputes but with concrete and specific issues raised by actual cases. * * * 'Constitutional questions are not to be dealt with abstractly.' * * * They will not be anticipated but will be dealt with only as they are appropriately raised upon a record before us."

In the instant case, the state temporarily stopped a strike to prevent a local catastrophe in spite of the general superiority of federal law in labor matters affecting commerce. The right of states to act in such local emergencies is a principle frequently announced in the leading decisions of federal pre-emption.

This Court first faced the federal pre-emption issue in connection with the conflict of federal and state labor legislation in the *Allen-Bradley* case, 315 U. S. 740. There, the employee or union conduct and activity forbidden by the State Board related to breaches of the peace such as mass picketing, threatening of employees and obstruction of factory entrances, streets and public roads. The Court held that the order of the Wisconsin Board, declaring such conduct to be unfair labor practices and requiring strikers to cease and desist, was not unconstitutional and void. In the opinion, the Court stated:

> "* * * We conclude that this case is not basically different from the common situation where a State takes steps to prevent breaches of the peace in connection with labor disputes. Since the state system of regulation, as construed and applied here, can be reconciled with the federal Act and since the two as focused in this case can consistently stand together, the order of the state Board must be sustained under the rule which has long obtained in this Court. See *Sinnot* v. *Davenport*, 22 How. (US) 227, 243, 16 L. Ed. 243, 247." 315 U. S. at 751.

Since then, this Court has frequently recognized the validity of state action to maintain local peace and prevent violence. In *Garner* v. *Teamsters Union*, 346 U. S. 485, 488, 98 L. Ed. 228 (1953), the Court, after noting that the Labor Management Relations Act "leaves much to the

states, though Congress has refrained from telling us how much," repeated the following principle:

> "This is not an instance of injurious conduct which the National Labor Relations Board is without express power to prevent and which therefore either is 'governable by the State or it is entirely ungoverned.' In such cases we have declined to find an implied exclusion of state powers. *International Union, U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245, 254, 93 L. Ed. 651, 663, 69 S. Ct. 516."

Later, in *Weber v. Anheuser-Busch, Inc.*, 348 U. S. 468, 476, 477, 99 L. Ed. 546 (1955), the Court reviewed prior decisions where state exercise of authority in the field of labor relations was found not to be exclusively absorbed by the federal law. These include the decisions in *Allen-Bradley Local v. Wisconsin Employment Relations Board*, 315 U. S. 740; *United Construction Workers v. Laburnum Construction Corp.*, 347 U. S. 656, and *International Union U. A. W. v. Wisconsin Employment Relations Board*, 336 U. S. 245. Because of the type of injurious conduct involved, state action was held to be permissible in these cases.

Still later, this Court in *United A. A. & A. I. W. v. Wisconsin Employment Relations Board*, 351 U. S. 266, 274, 100 L. Ed. 1162 (1956), reaffirmed the doctrine recognizing state jurisdiction in labor relations matters where because of violence, property damage, and breaches of the peace, the state had a compelling interest to protect the public welfare. In that case (351 U. S. at 274), the Court noted that "the dominant interest of the state in preventing violence and property damage cannot be questioned." State jurisdiction was thus upheld even if the union's violent conduct also violated federal law.

This dominant interest of the state where such injurious conduct is involved likewise was held to permit state jurisdiction in *International Union U. A. A. & A. I. W.* v. *Russell*, 356 U. S. 634, 2 L. Ed. 2d 1030 (1958), and *Youngdahl* v. *Rainfair*, 355 U. S. 131, 2 L. Ed 2d 151 (1957). Certainly, the underlying principles in these decisions can not be ignored. Breaches of the peace, violence, property damage and other forms of injurious conduct motivated the state action held to be permissible. In this case substantial actual and threatened property damage, actual and threatened personal injuries and the growing interruption of vital gas service which was fast breeding a local catastrophe motivated the state action. If a state may validly act to prevent mass picketing or breaches of the peace at a single plant, and if it may validly act to prevent threats of harm and general injurious conduct to the employees of a single employer, why should a state be powerless to prevent a serious and alarming emergency affecting an entire local community? In *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 751, this Court said:

> "* * * this case is not basically different from the common situation where a state takes steps to prevent breaches of the peace in connection with labor disputes."

The language in this foundation case is equally applicable here.

C. The intention of Congress to exclude state action in this field has not been clearly manifested.

This Court has frequently said it would not hold that the states are powerless to act in local emergencies unless the intention of Congress to exclude state action was

clearly manifested. After stating that the prevention of violence and property damage is a matter of "genuine local concern," this Court in *United A. A. & A. I. W. v. Wisconsin Employment Relations Board*, 351 U. S. 266, 274, 275, stated "* * * *We would not interpret an act of Congress to leave them powerless to avert such emergencies without compelling directions to that effect.*" (Emphasis supplied.)

Also, in *International Union UAW v. Wisconsin Employment Relations Board*, 336 U. S. 245, 253, 93 L. Ed. 651 (1949), the Court stated:

> "* * * However, as to coercive tactics in labor controversies, we have said of the National Labor Relations Act which is equally true of the Labor Management Act of 1947, that 'Congress designedly left open an area for state control' and that '*the intention of Congress to exclude the States from exercising their policy power must be clearly manifested.*' *Allen-Bradley Local, U. E. R. M. W. v. Wisconsin Employment Relations Board*, 315 U. S. 740, 749, 750, 86 L. Ed. 1154, 1164, 1165, 62 S. Ct. 820. We therefore turn to its legislation for evidence that Congress has clearly manifested an exclusion of the state power sought to be exercised in this case.
>
> "Congress made in the National Labor Relations Act no express delegation of power to the Board to permit or forbid this particular union conduct, from which an exclusion of state power could be implied. * * *" (Emphasis supplied.)

After citing those decisions relating to state exercise of jurisdictions in labor-management disputes involving "* * * conduct marked by violence and imminent threats to the public order," the Court in *San Diego Bldg. Trades*

Council v. *Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775, 784 (1959), stated:

> "* * * State jurisdiction has prevailed in these situations because the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overriden *in the absence of clearly expressed congressional direction.*" (Emphasis supplied.)

Obviously, Congress has not expressed clear and compelling direction to exclude state action from this field. On the contrary appellants do not argue that there is such clear and manifest direction, but instead urge that there is some significance in the failure of Congress to expressly place local utility disputes under the control of the federal law. Mr. Justice Frankfurter noted this in his dissent in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 403 (1951), when he stated:

> "At the outset it should be noted that the Taft-Hartley Act does not, in specific terms, deal with the problem of local strikes in public utilities even though such strikes, as a matter of constitutional law, may be brought under federal control. Congress considered and rejected special provision for settling public-utility disputes under federal law. * * * Due regard for basic elements in our federal system makes it appropriate that Congress be explicit if it desires to remove from the orbit of State regulation matters of such intimate concern to a locality as the continued maintenance of services on which the decent life of a modern community rests."

The focus of the King-Thompson Act is upon local emergencies in certain public utility labor disputes. Since Congress has not expressly directed that states shall be

precluded from exercising their police power in such matters, the action of the State of Missouri in this case should be upheld.

II.

The amalgamated decision does not control this case.

Certainly, it is most important in this case to consider this Court's decision in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364 (1951). To fully understand the *Amalgamated* decision a review of the decision of the Wisconsin Supreme Court in that case (257 Wis. 43, 42 N. W. 2d 471) is helpful. The facts, as they appear in these two decisions, show there was no actual strike or any interruption of necessary public utility services in that case and there was no emergency or violence such as occurred in the strike at the Laclede Gas Company.

In the opinion of the Supreme Court in the *Amalgamated* case (340 U. S. 383, 388), the Court examined closely one of the features of the Wisconsin Act which is substantially different from the Missouri Act, and the Court stated:

> "* * * In summary, the act substitutes arbitration upon order of the Board for collective bargaining whenever an impasse is reached in the bargaining process. And, to insure conformity with the statutory scheme, Wisconsin denies to utility employees the right to strike."

This Court, in its opinion in the *Amalgamated* case, observed (340 U. S. at 393) that the Wisconsin Act was not "emergency" legislation and that it does not "require the existence of an 'emergency'." The Court further observed (340 U. S. at 395, 396) that the Wisconsin Act sought to "abrogate" the right to strike altogether

in so far as the petitioners in that case were concerned. It was stressed, in the opinion (340 U. S. at 394), that Congress had closed to state regulation "the field of peaceful strikes in industries affecting commerce" and that the State of Wisconsin sought "to deny entirely a federally guaranteed right." Later in the opinion (340 U. S. at 398), the Court categorized the Wisconsin Act as "forbidding peaceful strikes" and therefore as forbidding the "exercise of rights protected by § 7 of the Federal Act."

In *Weber* v. *Anheuser-Busch, Inc.*, 348 U. S. 468, 99 L. Ed. 546, the Court observed that in the *Amalgamated* decision the Wisconsin statute was held invalid because "* * * it denied a right which Congress had guaranteed under § 7 of the Taft-Hartley Act—*the right to strike peacefully* to enforce union demands for wages, hours and working conditions." (Emphasis supplied.)

As opposed to the situation which prevailed in *Amalgamated*, the dispute at the Laclede Gas Company in this case involved an actual strike, interruption of vital utility services, sabotage, fires, escaping gas and, in fact, a local emergency. The Governor, in the exercise of his administrative functions, and the lower courts in reviewing the evidence, found that the public interest, health and safety were jeopardized.

Not only are there substantial differences in the "type of conduct" involved in the *Amalgamated* case and the instant case, but there are also substantial differences in the content of the statutes at issue in these cases. Section 295.200, Mo. Rev. Stat. (1949), makes strike in public utilities unlawful only after seizure. Strikes *per se* are not prohibited.[1] In fact, in this case, the strike commenced

[1] There have been sixteen strikes in public utilities in Missouri in which seizure was not invoked as opposed to seven seizure strikes since the passage of the King-Thompson Act. See Twelve Years Under the King-Thompson Act, p. 21, Missouri State Board of Mediation.

and endured to the point of peril before state action to stop the strike was undertaken.

In addition, the Wisconsin Act, held invalid in the *Amalgamated* case, provided for compulsory arbitration as a substitute for collective bargaining. However, the King-Thompson Act (295.030—295.150, Mo. Rev. Stat., 1949), provides for mediation but the State Board of Mediation has no power or authority to arbitrate issues or to compel concessions.

In spite of such basic differences in the type of conduct and in the statutes involved, it is urged by appellants that the decision in the *Amalgamated* case controls this case. This Court in *International Association of Machinists* v. *Gonzales*, 356 U. S. 617, 619, 2 L. Ed. 2d 1018 (1958), recently indicated the difficulties in generalization in this field when it said:

> "* * * the other half of what was pronounced in Garner—that the Act 'leaves much to the states,'—is no less important. See 346 U. S. at 488. The statutory implications concerning what has been taken from the States and what has been left to them are of a Delphic nature, to be translated into concreteness by the process of litigating elucidation." * * *

Until recently, those interested in these matters advanced the decisions of this Court in *United Auto Workers* v. *Russell*, 356 U. S. 634, 2 L. Ed 2d 1030 (1958), and *United Construction Workers* v. *Laburnum*, 347 U. S. 656, 98 L. Ed. 1025 (1954), as supporting the state court's jurisdiction to award tort damage judgments in labor-management disputes upon the ground that there was no federal counterpart to the state damage remedy. However, upon arrival of the proper case before it, this Court in *San Diego Bldg. Trades Council* v. *Garmon*, 359 U. S. 236, 3 L. Ed. 2d 775, 785 (1959), stated that the *Laburnum* and

Russell decisions were determined "* * * by the 'type of conduct' involved, i. e., 'intimidation and threats of imminent violence'."

In the *Garmon* case, the conduct involved was entirely peaceful and in its second *Garmon* opinion (359 U. S. 236), this Court distinguished the *Laburnum* and *Russell* decisions on the basis of the conduct involved, i. e., peaceful conduct as opposed to conduct marked by violence and threats to the public order, and in the course of the opinon the Court set forth this important reminder:

> "In the area of regulation with which we are here concerned, the process thus described has contracted initial ambiguity and doubt and established guides for judgment by interested parties and certainly guides for decision. We state these principles in full realization that, in the course of a process of tentative, fragmentary illumination carried on over more than a decade during which the writers of opinions almost inevitably, because unconsciously, focus their primary attention on the facts of particular situations, *language may have been used or views implied which do not completely harmonize with the clear pattern which the decisions have evolved.*" 3 L. Ed. 2d at 781. (Emphasis supplied.)

Any doubts, which may arise from the *Amalgamated* case, as to state jurisdiction in the instant case should be completely solved by the long series of other decisions relating to state power to act in labor disputes where violence, breaches of peace and property damage create a compelling and overriding public interest.

Conclusion.

We live in a society of organized employers and organized employees. Disputes between them, especially when life essential public utility services are interrupted, may

disturb the local peace more seriously and for longer periods than disputes among individuals which every state controls without protest. One of the basic principles which manifests itself in the long series of federal pre-emption cases is that states retain jurisdiction in labor-management disputes affecting commerce to control and suppress such disturbances to local peace.

For all of the foregoing reasons, it is respectfully submitted that the decision of the Missouri Supreme Court below should be affirmed.

Respectfully submitted,

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STATE OF MISSOURI,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND BRIEF OF KANSAS CITY POWER & LIGHT COMPANY, AMICUS CURIAE.

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No. 42.

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

LOCAL NO. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, et al.,
Appellants,

vs.

STATE OF MISSOURI,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF MISSOURI.

MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE.

Kansas City Power & Light Company, a Missouri corporation, hereby respectfully moves for leave to file a brief as *amicus curiae* in this case. The consent of appellee's attorney has been obtained. The consent of appellants' attorneys has been requested but refused.

The interest of Kansas City Power & Light Company in this case arises from the fact that it is a public utility

operating in the State of Missouri and obligated by the Public Service Commission Act of said State (Chapter 386, RSMo 1949) to render continuous, safe and adequate electrical service to the public in Kansas City, Missouri, and in other parts of the State. The Company operations are governed by the provisions of the act which is challenged in this proceeding (Chapter 295, RSMo 1949), commonly known as the King-Thompson Act, which was enacted to protect the people of Missouri from threatened interruptions in the service of public utilities.

In addition to its general interest in this legislation, arising from its duty to provide continuous service to the public, Kansas City Power & Light Company is interested as a party having had direct experience under the act. The Company was seized, pursuant to the provisions of the King-Thompson Act, in 1956 and again in 1957, when the Governor of Missouri determined that labor disputes between the Company and its employees threatened to interrupt the operations of the Company and to disrupt electrical service to the public.

Further, the Company is interested in pending litigation which will be affected by this case. Those employees of the Company represented by Local Union 1464, International Brotherhood of Electrical Workers, have filed two suits in the United States District Court for the Western District of Missouri, challenging the constitutionality of the King-Thompson Act. The first of such suits (*Local Union 1464, International Brotherhood of Electrical Workers*, v. *James T. Blair, Jr., et al.*, U.S.D.C.W.D.Mo., W. Div., No 10907) was dismissed as moot by the District Court on June 13, 1957. An appeal to this Court was dismissed by the District Court on September 9, 1958. A similarly-styled suit (numbered 11840) was filed on October 29, 1957, and is now pending in Kansas City.

This pending litigation, challenging the constitutionality of the King-Thompson Act, and filed by employees of Kansas City Power & Light Company, may be controlled by the decision rendered by the Court in the instant case.

Filing of the attached amicus brief is desirable because, in the Supreme Court of Missouri, appellee failed to join in the request of *amici curiae* that the appeal be dismissed for mootness, which request was grounded on the fact that the injunction against appellants, hereinafter discussed, had expired of its own terms (R. 341). There is no reason to believe that appellee will now advocate a ruling of mootness, not having done so below. Being convinced that prior decisions of this Court require a finding of mootness, Kansas City Power & Light Company is prepared to advocate such a ruling. Further, the Company makes additional arguments in the attached brief, relative to recent decisions of this Court and to legislative history, none of which was covered by the appellee in its brief below. If any of the additional arguments here advanced are accepted, they would be dispositive of the case.

Respectfully submitted,

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BRIEF OF KANSAS CITY POWER & LIGHT COMPANY, AMICUS CURIAE.

INTEREST OF AMICUS CURIAE.

A statement of the interest of Kansas City Power & Light Company in this litigation is set forth in the foregoing motion for leave to file brief as *amicus curiae*, and is adopted herein by reference.

ARGUMENT.

I. Appellate Review of the Validity of the Injunction Below Cannot Be Had, When the Case Has Become Moot by Expiration of the Injunction.

In response to appellants' jurisdictional statement, this Court ruled, on May 4, 1959, "Further consideration of the question of jurisdiction is postponed to the hearing of the case on the merits" (R. 375). This notation constitutes a special "warning that the Court has doubts about its jurisdiction over the appeal." Stern and Gressman, *Supreme Court Practice* (2d ed.) 53. Appellants had previously recognized a serious procedural problem, and devoted intensive consideration to the subject of mootness in their jurisdictional statement, pages 12-14.

Consideration of the question of mootness requires preliminary review of the status of this litigation, and of a companion case pending in the trial court. The suits were filed after the seizure of Laclede Gas Company on July 5, 1956, arising from emergency conditions stated in the proclamation of Governor Donnelly and in the executive order of the same date (R. 15, 17). Four days after seizure, on July 9, 1956, the present suit was filed (R. 7, 19). Litigation was based on a "Petition for Injunction," seeking to prevent a work stoppage and interruption of service by appellants (R. 7, 14-15). After a hearing, a decree of permanent injunction was entered on July 14, 1956, enjoining appellants from "continuing, inciting, supporting and participating in (a certain) work stoppage, refusal to work and strike . . ." (R. 277). The original decree denied appellants' petition for declaratory judg-

ment, filed as a counterclaim at the conclusion of the hearing (R. 272), which petition sought a ruling invalidating the entire Chapter 295, RSMo 1949, known as the King-Thompson Act. Thereafter, the trial court amended its order to limit the restriction on striking to the duration of state seizure, and entered a ruling that the act was valid in its entirety (R. 295). Before examining subsequent developments relating to this injunction suit, consideration will be given to concurrent litigation now pending in the trial court.

The Missouri Supreme Court took judicial notice (R. 341) that on July 7, 1956, two days after the seizure and two days before the filing of the injunction suit, the State filed against appellants a suit seeking statutory penalties on account of the work stoppage throughout July 6, 1956 (R. 313-317). In its opinion in this injunction suit, the Supreme Court noted that the suit for penalties was still pending in the trial court (R. 341).

The Missouri Supreme Court noted that after the filing of these two suits a labor agreement was signed between the disputants on August 10, 1956 and that the Governor terminated seizure of the utility on October 31, 1956. By the terms of the injunction, as amended, it expired on the latter date (R. 341, 295). The Supreme Court further ruled that the trial court should not have considered the constitutionality of sections of the act not directly involved and necessary to decision in testing the validity of the injunction (R. 344, 356, 361). Pursuant to this principle, the Missouri Supreme Court declined to rule on sections of the act "relating to monetary penalties and loss of seniority" (R. 356).

On this appeal, appellants apparently concede that the injunction itself no longer presents a live issue, but

seek to sustain life in the underlying legal issues on the ground that there are current questions relating to penalties and seniority (Brief for Appellants, 30-31). Thus, they ask this Court to reach the merits because the act contains provisions for penalties and loss of seniority which the Missouri Supreme Court specifically declined to review.

The procedural status of this case is almost identical with that in *Amalgamated Ass'n* v. *Wisconsin Employment Relations Board*, 340 U.S. 416 (hereinafter sometimes referred to as the second *Amalgamated* decision), where the Court ruled that, although there were live issues in companion cases, the cause presented could not be considered on the merits, having become moot. In that case, review was sought of an arbitration award granted under the terms of the Wisconsin Public Utility Anti-Strike Law. The award had a statutory time limitation of one year. A unanimous Court ruled (l.c. 418):

> "We are informed that this award was superseded by agreement, and, in any event, the one-year period has elapsed. There being no subject matter upon which the judgment of this Court can operate, the cause is moot.
>
> "It is argued that the Wisconsin courts have adopted a practice of deciding questions of importance even though the case has become moot, and we are urged to follow the same practice. But whatever the practice in Wisconsin courts, 'A federal court is without power to decide moot questions or to give advisory opinions which cannot affect the rights of the litigants in the case before it (citing).'"

The Court distinguished the companion cases, upon which it reached the merits, by stating (l.c. 417, note 1):

> "It has been argued that No. 329 and No. 438 are moot by reason of the settlement of the immediate dispute which led to the strike action in each case. The injunction before us in No. 329 is 'perpetual' by its terms so that the action does not become moot, even though the decree be obeyed (citing). As to No. 438, the judgment below imposes fines upon petitioners. No question of mootness can be raised so long as enforcement of that judgment is sought."

Note particularly the clear implication in the footnote that the issue in the companion case, No. 329, would have been rendered moot if the injunction had not been perpetual. In the present case, the injunction, like the arbitration award in the second *Amalgamated* case which was ruled moot, expired by its own terms.

Neither penalties nor seniority rights turn on the validity of the injunction. The imposition of penalties and possible loss of seniority would result from violation of duties arising upon seizure, not from violation of the injunction subsequently sought and obtained. Section 295.200, RSMo 1949.

This case is clearly rendered moot under the ruling in the second *Amalgamated* case. The live issue of penalties in the companion case now pending may be litigated and reviewed in appropriate manner, as was done in the *Amalgamated* litigation, but this fact does not preserve questions which are otherwise rendered moot.

A second controlling decision is *Harris* v. *Battle*, 348 U.S. 803, involving mootness of a proceeding to test the validity of the seizure provisions of the Virginia counterpart of the King-Thompson Act. After an agreement between the Union and the Company, and the termination of seizure, the trial court in Virginia nevertheless decided on the merits that the act was constitutional (*Harris* v. *Battle*, 32 LRRM 83), but the Supreme Court of Virginia

held that the case had become moot (*Harris* v. *Battle*, 195 Va. lxxxviii, 34 LRRM 2793), and this Court agreed (348 U.S. 803).

The principal procedural difference between this case and the *Harris* case is that the State here sought an injunction to effectuate the purposes of the act, while in *Harris* the union officials sought to enjoin operation of the Virginia statute. Appellants do not claim this is a substantial distinction. They claim that the difference lies in the consequences of seizure under Missouri and Virginia law, and hark back to the question of penalties and loss of seniority, which the Missouri court declined to consider, and which would only give life to companion cases. Appellants further claim that questions of public importance are here involved which it is desirable to have answered, seemingly without regard to whether there is a ripe controversy between the parties. This contention was answered by the Court in the second *Amalgamated* opinion, quoted above, and did not persuade the Court in *Harris* v. *Battle*, *supra*.

It is unnecessary to wander afield in a general survey of the law of mootness when the *Amalgamated* and *Harris* decisions so closely govern the issue. It is submitted that the Court is foreclosed by its rulings in these cases from reaching the merits of this injunction suit.

II. The King-Thompson Injunction Procedure Should Be Sustained As a Valid Exercise of the State's Police Powers, Not Inconsistent with Federal Legislation.

A. The Amalgamated Decision Does Not Require a Pre-emption Ruling in This Case.

Appellants contend that this case is controlled by *Amalgamated Ass'n* v. *Wisconsin Employment Relations*

Board, 340 U.S. 383, which invalidated the Public Utility Anti-Strike Law of Wisconsin, in litigation involving a perpetual injunction and fines imposed for contempt of court. This decision was rendered in the companion cases referred to in the footnote of the similarly-styled case which this Court ruled moot, 340 U.S. 416. The opinion of the Missouri Supreme Court (R. 338) provides a closely-reasoned answer to appellants' contention, and if elaboration is desirable, undoubtedly the State will supply it. Summarily, it may be stated that after reviewing the history of the King-Thompson Act as an exercise of the State's police powers, and as a necessary adjunct to the Public Service Commission Act (Chapter 386, RSMo 1949) which requires public utilities to render continuous, safe and adequate service, the Missouri Supreme Court noted that the Wisconsin statute provided compulsory arbitration in non-emergency situations, which this Court found to be inconsistent with the Taft-Hartley Act, while the statute at bar does not provide compulsory arbitration, deals only with local emergencies, preserves collective bargaining, and complements the federal law. The Missouri Supreme Court held that there is nothing in the federal legislation or in the decisions of this Court which would establish an unconditional right to strike, regardless of the consequences and circumstances, and that recognized restrictions on the right, established by local law and consistent with federal law, could be applied by analogy to sustain the King-Thompson Act.

The majority opinion of Mr. Chief Justice Vinson in the *Amalgamated* decision, *supra*, clearly anticipated the distinction which is here urged, when he stated (l.c. 393-394), "the Wisconsin Act before us is not 'emergency' legislation . . . . Far from being limited to 'local emergencies,' the act has been applied to dispute national in scope.

and application of the act does not require the existence of an 'emergency.'" In footnote 19, the Chief Justice continued (l.c. 394), "Far from being legislation aimed at 'emergencies,' the Wisconsin Act has been invoked to avert a threatened strike of clerical workers of a utility (citation)." The majority opinion was also careful to point out (l.c. 398-399) the inconsistency between the federal duty to continue collective bargaining and the state invocation of compulsory arbitration to resolve an "impasse." It would not be safe to assume, as appellants do, that these considerations, entering into the majority opinion in *Amalgamated*, and absent in the present case, were not decisive in the thinking of those who constituted the majority of the Court in 1951. It is entirely consistent to concur in the *Amalgamated* decision and to sustain the King-Thompson Act.

Subsequent to the decision of the Missouri Supreme Court, powerful additional support has been given to an interpretation of the *Amalgamated* decision which would limit its application to instances which are clearly inconsistent with federal labor legislation, and which would permit legislation of the type enacted by the State of Missouri. *San Diego Building Trades Council* v. *Garmon*, 359 U.S. 236. The decision itself merely held that a State court could not award damages for picketing which it could not enjoin. As noted in the concurring opinion, however (l.c. 250), the majority took the occasion to make a declaration of law which "will stand as a landmark in future 'pre-emption' cases in the labor field."

The majority opinion of Mr. Justice Frankfurter repeats prior declarations of the Court that (l.c. 240) ". . . the Labor Management Relations Act 'leaves much to the states, though Congress has refrained from telling us how much . . .'" The majority opinion further states (l.c.

243-244) "due regard for the presuppositions of our embracing federal system . . . has required us not to find withdrawal from the states of power to regulate . . . where the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling Congressional direction, we could not infer that Congress had deprived the States of the power to act." A similar thought is developed further in the *Garmon* opinion, where Mr. Justice Frankfurter states (l.c. 247), ". . . the compelling state interest, in the scheme of our federalism, in the maintenance of domestic peace is not overridden in the absence of clearly expressed Congressional direction."

The author of the *Garmon* opinion was very clearly recognizing local authority over both "violence" and other "imminent threats to the public order," such as are likely in an emergency situation arising during a strike in a public utility. This is apparent in Mr. Justice Frankfurter's use of reasoning almost identical to that in *Garmon* in his minority opinion dealing with the State of Wisconsin's Public Utility Anti-Strike Law, where he stated: "Due regard for the basic elements in our federal system makes it appropriate that Congress be explicit if it desires to remove from the orbit of State regulation matters of such intimate concern to a locality as the continued maintenance of services on which the decent life of a modern community rests . . . I find no indication in the (federal) statute that the States are not equally free to protect the public interest in State emergencies." *Amalgamated Ass'n v. Wisconsin Employment Relations Board*, 340 U.S. 383, 403-404, 409. It would appear from *Garmon* that the majority of the Court is now prepared to accept at least this much of the reasoning expressed by Mr. Justice Frankfurter in his dissent in the *Amalgamated* case. The *Gar-*

mon decision is authority for the proposition that the States may exercise the police powers where, as here, there are "imminent threats to the public order" and "compelling state interest . . . in the maintenance of domestic peace." It is difficult to imagine a stronger case than the present one, in the labor-management field, which is as "deeply rooted in local feeling and responsibility," and which therefore resists application of a doctrine resulting in local disability.

It may perhaps be argued from the ruling in *Garmon* that the Labor Board should have primary jurisdiction to determine whether strikes in public utilities create local emergencies and, if so, whether they are nevertheless protected by the federal law. This would, however, be a perversion of the *Garmon* decision, where, as in an economic strike against a public utility, there is no arguable basis for filing an unfair labor practice charge, and thus no statutory method of reaching the Board for decision. It would be patently unsound to concede on the one hand that Congress left the States free to deal with local emergencies, but to hold on the other hand that the determination of whether or not there was such an emergency must be withheld in deference to the expertise of the Labor Board, when Congress has failed to provide a statutory method by which that expertise could be exercised.

It thus appears, from the most recent pronouncement of this Court, as well as from the reasons developed prior thereto, that the *Amalgamated* decision is not so far-reaching as to require the invalidation of the King-Thompson Act, and that the act, as applied in this case, is a proper exercise of the State's police powers, and is not affected by federal legislation.

B. Legislative History Favors Validity of the King-Thompson Act.

Appellants argue that Congress has "approved and reenacted the rule of the *Amalgamated* case—that states may not curtail the right to strike of employees of local public utilities over which the Board asserts jurisdiction." (Brief for Appellants, page 29). They rely on (1) Senate rejection of the Holland amendment, which would have given express authority to the States to regulate, qualify or prohibit strikes by employees of public utilities and (2) the adoption of an amendment to the Taft-Hartley Act which dealt with federal-state jurisdiction and ceded complete jurisdiction to the States in certain instances but which did not treat the issue here, where there is concurrent jurisdiction over the industry involved.

The amendment to Taft-Hartley was contained in Section 701 (a), Labor-Management Reporting and Disclosure Act of 1959, Public Law 86-257. The adoption by Congress of this amendment in which, in the words of Senator Carroll (105 Cong. Rec. 16416) "for the first time —we begin to *soften* the so-called doctrine of pre-emption" cannot reasonably be the occasion for claiming that all pre-emption decisions not touched by Congress were automatically reaffirmed, and all pre-emption questions not treated were ruled in favor of federal control.

The rejection of the Holland amendment in 1958 (104 Cong. Rec. 9995) and again in 1959 (105 Cong. Rec. 6044) might lead to inferences favorable to appellants' claim, if it were not for the debates leading up to the votes, which are fatal to the contention made by appellants.

The 1958 debate is full of criticism of the *Amalgamated* decision by Senators who nevertheless voted against the amendment, with only Senator Morse making a brief argu-

ment against the amendment, on the merits. Even Senator Morse's argument was directed against compulsory arbitration (104 Cong. Rec. 9991, 9993) rather than against the type of provision contained in the King-Thompson Act. He stated (l.c. 9991) "I think there are alternative procedures for handling public utility strikes," and certainly took no such extreme position as appellants seem to urge, which would establish an unconditional right to disrupt public services.

The spokesmen for the opposition to the Holland amendment opposed it on the ground that it was not pertinent to the pending legislation, had not been fully considered in committee, or was "controversial," but almost every one asserted that he favored state regulation of public utility strikes. Typical of the opposition comments are those of Senator Ervin, who asserted the view (l.c. 9990), that the majority opinion in *Amalgamated* "misconstrued" Taft-Hartley, and said, "I am strongly in favor of the enactment of a law which will carry out the objective of (this) amendment."

In the 1959 debate on the Holland amendment, an opposition spokesman, Senator Goldwater, expressed "sympathy" for the purposes of the amendment, but contended that its adoption "could open up the Taft-Hartley Pandora's box" (105 Cong. Rec. 6043). Senator Kennedy indicated that the amendment would permit state action which would exceed justified restraints on crippling strikes in public utilities, and questioned the public necessity of a limitation on the right to strike against public transportation systems, or when a stoppage of electric power would merely affect farming operations (l.c. 6043). Appellants quote a portion of Senator Kennedy's remarks, but omit the following significant statement which demonstrates an attitude completely contrary to that which

might be inferred from the partial-quote appearing in appellants' brief (page 28): "I do not believe that that (agricultural) case warrants acceptance on the floor of the Senate of what is in effect a measure of compulsory arbitration, particularly when the courts have the power to act in cases in which the health, safety, and basic welfare of the citizens of the State are at stake. The courts have been given by the States the power to seize industries to protect the public health and safety." (105 Cong. Rec. 6043). This statement was made by Senator Kennedy on April 25, 1959, five days after this Court's decision in the *Garmon* case, and it would strongly appear that the Court's reasoning in that landmark decision on pre-emption was the source of Senator Kennedy's interpretation of the pre-emption rule, which is essentially identical with the interpretation here suggested. Thus, far from "reaffirming" the *Amalgamated* decision and extending its application, Congressional sources cut the ground from under appellants' argument.

It is submitted that extension of the *Amalgamated* doctrine to invalidate the King-Thompson Act would be contrary to Congressional intent as well as the *Garmon* decision, and would completely ignore the legitimate interests of the State of Missouri, where the House of Representatives this year defeated a serious effort to repeal the King-Thompson Act by a vote of 92 to 50. House Journal, 70th General Assembly, page 298 (February 10, 1959).

C. The Amalgamated Decision Should Be Overturned If It Necessarily Invalidates the King-Thompson Act.

Argument has heretofore been made that appellants are urging a wholly unwarranted extension of the *Amalgamated* decision, which would cripple local authorities

in the exercise of the police power, in a manner which is not required by federal legislation and would in fact upset the division of state-federal responsibility in the labor field. If, however, there are members of the Court who have difficulty squaring the King-Thompson Act, as applied in this case, with the *Amalgamated* decision, then it is respectfully urged that the principles announced in the *Amalgamated* decision should be reconsidered and overturned in the light of further experience and additional guides to Congressional intent.

In the *Amalgamated* decision, and particularly in footnote 21, the majority of the Court inferred that the sponsors of the Taft-Hartley Act, notably Senator Taft, were seeking to assure a federally-protected right to strike in public utilities, and were not merely by-passing this question as a matter of federal law, thus leaving the States free to regulate labor disputes of essentially local concern, consistently with the federal scheme. The dissenting opinion in *Amalgamated* refused to accept this interpretation of Senator Taft's comments (l.c. 403-404), and it can now be determined that the minority opinion correctly viewed the legislative intent of Taft-Hartley's sponsors.

Professor Paul R. Hays of Columbia University, in an article entitled "Federalism and Labor Relations in the United States," 102 Univ. of Pa. L. Rev. 959 (1954), concluded that the legislative history of the Wagner and Taft-Hartley Acts might be summarized as follows (l.c. 965-966):

> "If congressional 'intent' concerning state regulation of labor relations may be derived not only from the express comments on particular aspects of the problem but also from the attitude of Congressmen in general, then the legislative history of the two acts

> taken as a whole and the comments of the senators at the 1953 hearing on proposed amendments support the contention that Congress intended to supplement state regulations rather than to displace it. For example, Mr. Hartley said (in 1947), in answer to a question about the effect of the federal act on Wisconsin Law: '. . . this will not interfere with the State of Wisconsin in the administration of its own laws.' (citation). Senator Taft said (in 1953): 'I may say that we never intended any pre-emption of the field. The Supreme Court has gone beyond what we intend.' (citation). 'In general, I am quite willing to leave to the states the control of anything that we can do.' (citation). 'Of course, I do not offhand see why the states cannot handle a local public utilities strike, a street car strike, or anything else, as well as the Federal Government.' (citation)."

Professor Hays continued (l.c. 968):

> "The Court has held that, where the Congress chose to regulate strikes which create a national emergency, its rejection of proposed legislation which would have regulated local emergencies as well indicates an intention that local emergencies should be 'unregulated.' (citation of *Amalgamated* case). It seems much more likely that Congress 'intended' to leave such regulation to the states."

Likewise, Professor Bernard D. Meltzer of The University of Chicago, in an article entitled "The Supreme Court, Congress and State Jurisdiction Over Labor Relations," Special Supplement, The University of Chicago Law School Record (1958), 95, suggested (l.c. 98) that in the *Amalgamated* decision "an abstract formula became controlling despite the fact that such a formula could not be supported in terms of either a plainly expressed legislative purpose or the consequences produced in concrete situations." Professor Meltzer compared "the Court's

sanction of state power over 'violence' on the picket line" with its apparent "denial of state power to maintain the flow of essential services," and commented (l.c. 98):

> "Plainly a breakdown in such services could enormously increase and complicate the problem of preserving order. Furthermore, such a breakdown posed at least as serious a problem for local authorities as a breach in the etiquette of picketing."

Finally, in the debates on the Holland amendment, Senator Holland reported (104 Cong. Rec. 9984) that Senator Taft "made no secret of his complete disagreement with the majority opinion" in the *Amalgamated* case which had relied heavily upon the supposed support of the principal sponsor of the Taft-Hartley Act.

It is submitted that strict adherence to the doctrine of *stare decisis* would require a finding that the issues which appellants seek to litigate in this appeal have become moot, and that appellants should be directed to rely on the pending companion litigation relating to penalties in order to gain a resolution of the questions which they want answered. If, however, the Court should find occasion to reach the merits of this case, contrary to its practice heretofore discussed, and if the Court should also conclude that the current validity of the *Amalgamated* principle is decisive, it is respectfully submitted that the Court should then depart from precedent on the substantive, as well as the procedural, question, and should abandon the first, as well as the second, *Amalgamated* decision, in the light of experience and additional guides to legislative intent.

CONCLUSION.

For the foregoing reasons, it is respectfully submitted that the Court should rule the issues in this case moot, or should affirm the judgment below, on the ground that "the regulated conduct touched interests so deeply rooted in local feeling and responsibility that, in the absence of compelling Congressional direction (the Court) could not infer that Congress had deprived the States of the power to act."

Respectfully submitted.

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ILE COPY

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Appeal from the Supreme Court of the State of Missouri.

MOTION

Of the Chamber of Commerce of Metropolitan St. Louis for Leave to File a Brief as Amicus Curiae.

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Appeal from the Supreme Court of the State of Missouri.

MOTION

Of the Chamber of Commerce of Metropolitan St. Louis for Leave to File a Brief as Amicus Curiae.

Now comes the Chamber of Commerce of Metropolitan St. Louis and respectfully moves this Court, pursuant to 42 (3) of the Rules of this Court, for leave to file a brief in this case *amicus curiae*. The consent of the attorney for the appellee herein to the filing of a brief *amicus curiae* was obtained, but the consent of the attorney for appellants was refused. The interest of the St. Louis Chamber of Commerce and its reasons for asking for leave to file a brief *amicus curiae* are set forth below.

Movant is a corporation organized under the laws of the State of Missouri and has as its purpose the promotion of the commercial, industrial, financial, business, cultural, educational and civic interests and general welfare of the public of St. Louis and of the St. Louis Metropolitan area. Movant is not a pecuniary profit earning corporation. Movant has as its members numerous firms and individuals representing the commercial, industrial, financial and business interests of the City of St. Louis.

Movant desires that it be allowed to file a brief in this cause in order that the Court may have before it the point of view of the business interests in St. Louis toward the validity of the King-Thompson Act which is under attack in this case. Many of movant's members are users of gas and are dependent upon it for the operation of their businesses. Since this case involves the power of the State of Missouri, under certain circumstances, to take possession of a public utility distributing gas to many businesses all over the City of St. Louis, the movant is vitally interested in the outcome of this litigation.

The appellee in this case, the State of Missouri, represents the public at large and therefore cannot adequately present the facts or the law of this case as they apply specifically to the business interests in the City of St. Louis. The movant believes that it should be allowed to file a brief emphasizing from a business management standpoint the factual and legal aspects of the question of the power of the State of Missouri to take possession of a public utility company after a strike has been declared and an emergency situation exists which seriously affects the operation of businesses throughout the community. Such a brief would analyze the relevancy of the factual existence of an emergency situation in determining the power of a State, under the police power, to take possession of a public utility. The Court in prior decisions has noted the relevancy of the existence of an emer-

gency in determining the proper limits of State power. **Allen-Bradley Local v. Wisconsin Board**, 315 U. S. 740, 748-749 (1942); **International Union, United Auto Workers v. Wisconsin Board**, 336 U. S. 245, 252-265 (1949); **Auto Workers v. Wisconsin Board**, 351 U. S. 266, 274-275 (1956); **Youngdahl v. Rainfair**, 355 U. S. 131, 138 (1957). And see **Amalgamated Association of Street, Electric Railway and Motor Coach Employees of America v. Wisconsin Employment Relations Board**, 340 U. S. 383, 393-396, 406-407 (1951).

It is respectfully submitted that the welfare of the business interests of St. Louis are vitally at stake in this litigation and that therefore movant should be allowed to present the viewpoint of business toward the issues presented by this case.

Respectfully submitted,

COBURN & CROFT,

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MOTION FILED OCT 2 5 1959

No. 42.

In the Supreme Court of the United States

October Term, 1959.

LOCAL No. 8-6, OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO, *et al.*, *Appellants*,

vs.

STATE OF MISSOURI.

On Appeal from the Supreme Court of Missouri.

MOTION OF MISSOURI STATE CHAMBER OF COMMERCE, THE CHAMBER OF COMMERCE OF KANSAS CITY, MISSOURI, THE MISSOURI FARM BUREAU FEDERATION, THE CHAMBERS OF COMMERCE OF ST. JOSEPH, SPRINGFIELD AND JOPLIN, MISSOURI, FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*.

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The Missouri State Chamber of Commerce, the Chamber of Commerce of Kansas City, Missouri, the Missouri Farm Bureau Federation and the Chambers of Commerce of the cities of St. Joseph, Springfield and Joplin, Missouri, hereby respectfully move this Court for leave to file the accompanying brief as *amici curiae* in this cause. The

consent of Counsel for appellee to the filing of this brief was obtained, but Counsel for appellants have withheld their consent.

The Missouri State Chamber of Commerce represents and includes within its membership, individuals and business organizations in virtually all lines of endeavor throughout the State of Missouri. Its membership includes 114 local Chambers of Commerce and similar organizations and trade associations. Included in the membership of the Missouri Farm Bureau Federation are farmers, cattlemen and organizations both business and civic concerned with agriculture. The Chamber of Commerce of Kansas City, Missouri, and the Chambers of Commerce of St. Joseph, Springfield and Joplin, Missouri, include among their members, many thousands of individuals and business organizations in varied commercial and industrial fields in the four largest cities in Western Missouri. Your Movants are all non-profit organizations. Their purposes and functions are to promote the general public interest and welfare and to protect the interest of their members through many civic, educational, cultural and industrial programs.

Movants are vitally concerned and interested in the cause. Their members span commerce, industry and agriculture. They include small-town merchants and large industrial corporations. They include professional men and farmers, and these members, small or large, urban or rural, are all dependent upon the constant flow of the essential utility services.

Many utilities, supplying vital public services, are members of and represented by Movants. Other members are involved in a multitude of diverse activities requiring constant public utility service. Many companies and businesses, represented by movants, employ and bargain col-

lectively with union labor. As citizens and workers, these employees likewise have an undeniable interest through their employers in this matter.

Movants, representing various citizens in industry, commerce and agriculture in the State of Missouri, assert that a fair and correct construction of applicable state and federal statutes gives Movants, their members and those dependent upon them, the right to rely upon the emergency relief afforded by Chapter 295, Mo. Rev. Stat. (1949), where the public interest, health and welfare are jeopardized. Movants, therefore, ask leave to file the accompanying brief, and in support thereof state:

1. The appellee in this case is the State of Missouri. While representing the state most competently, the Attorney General, nevertheless cannot be fully cognizant of the experience, views and beliefs of business men and farmers. There are a number of issues present in this matter to which appellee must devote considerable attention, as for example, the question of jurisdiction, reserved by this Court in its order of May 4, 1959. One of the crucial issues is whether conflict exists between the Missouri and federal law, whether the Missouri law as applied in this case can stand together with the federal law and whether state jurisdiction in this case should be upheld because of an overriding and compelling state interest in the maintenance of domestic peace. Much of the brief of the State of Missouri before the Supreme Court of Missouri in this case was devoted to other arguments. In the opinion of your Movants, this issue, so vital to management and labor, will not be adequately presented by the State of Missouri.

2. In the accompaning brief, your Movants have set forth very basic differences between the facts and the statute involved in *Amalgamated Association* v. *Wisconsin Employment Relations Board*, 340 U. S. 383, 95 L. Ed. 364 (1951), and the case at issue. In

addition, Movants bring to the Court's attention the analysis and application of the principles which should control this case—those principles that have gathered light from the decisions handed down by this high Court in federal-state jurisdiction disputes since the decision in the *Amalgamated* case. The analysis of these decisions by appellee in its brief before the Supreme Court of Missouri was not fully developed and your Movants have no reason to believe that appellee's arguments on this point will be expanded or made more complete in this Court.

3. While this case grows out of a certain dispute in the St. Louis area, the future impact of this Court's opinion, can and will affect labor, management, and the public over the entire state. A full and complete hearing by this Court requires a review of Movant's brief.

4. Permission to Movants, to file the accompanying brief as *amici curiae*, will neither delay this matter nor prejudice the adjudication of the rights of the original parties hereto.

Your Movants firmly believe in and support the rights of employees to organize and to bargain collectively through representatives of their own choosing. They believe in and support the right of employees to withhold their labor and to engage in peaceful concerted activities for their mutual interest and self protection. However, Movants also firmly believe that the disruption of vital utility services in a labor dispute can create an overriding public interest and that neither management nor labor can force the granting of demands at the expense of the public peace, welfare and safety.

For all of these reasons, your Movants respectfully request permission to file the accompanying brief as *amici curiae* to urge the affirmance of the judgment of the Supreme Court of Missouri.

Respectfully submitted,

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October, 1959

SUPREME COURT OF THE UNITED STATES

No. 42.—October Term, 1959.

Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO, et al., Appellants. v. Missouri.	On Appeal From the Supreme Court of Missouri.

[January 25, 1960.]

Mr. Justice Stewart delivered the opinion of the Court.

This is an appeal from a judgment of the Supreme Court of Missouri affirming a decree which enjoined the appellants from continuing a strike against a St. Louis public utility. The judgment upheld the constitutionality of certain provisions of a Missouri law, commonly known as the King-Thompson Act, which authorizes the Governor on behalf of the State to take possession of and operate a public utility affected by a work stoppage when in his opinion "the public interest, health and welfare are jeopardized," and "the exercise of such authority is necessary to insure the operation of such public utility."[1]

In the state courts and in this Court the appellants have contended that the Missouri law conflicts with federal legislation enacted under the Commerce Clause of the Federal Constitution, and that it violates the Due Process Clause of the Fourteenth Amendment. Because of doubt as to whether the controversy was moot, we postponed further consideration of the question of jurisdiction to the hearing of the case on the merits. 359 U. S. 982.

[1] The King-Thompson Act is Chapter 295 of the Revised Statutes of Missouri, 1949. The section of the statute which authorizes seizure by the Governor on behalf of the State is Mo. Rev. Stat., 1949, § 295.180.

The appellants are labor unions which represent employees of the Laclede Gas Company, a corporation engaged in the business of selling natural gas in the St. Louis area. In the spring of 1956 the appellants notified Laclede of their desire to negotiate changes in the terms of the collective bargaining agreement which was to expire in that year. Extended negotiations were conducted, but no new agreement was reached, and upon expiration of the existing contract on June 30, 1956, the employees went out on strike.[2]

Five days later the Governor of Missouri issued a proclamation stating that after investigation he believed that the public interest, health, and welfare were in jeopardy, and that seizure under authority of the state law was necessary to insure the company's continued operation. In an executive order issued the same day the Governor took "possession" of Laclede "for the use and operation by the State of Missouri in the public interest." A second executive order provided that all of the "rules and regulations . . . governing the internal management and organization of the company, and its duties and responsibilities shall remain in force and effect throughout the term of operation by the State of Missouri."

After the seizure the appellants continued the strike in violation of the statute,[3] and the State of Missouri filed suit for an injunction against them in the Circuit Court

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[2] All employees represented by the appellants, approximately 2,200, participated in the strike; approximately 300 supervisors and others not in the bargaining units, represented by the appellants remained at work.

[3] Missouri Rev. Stat., 1949, § 295.200 (1), provides: "It shall be unlawful for any person, employee, or representative as defined in this chapter to call, incite, support or participate in any strike or concerted refusal to work for any utility or for the state after any plant, equipment or facility has been taken over by the state under this chapter, as means of enforcing any demands against the utility or against the state."

of St. Louis.[4] At the end of a three-day hearing the trial court entered an order enjoining the appellants from continuing the strike, and in an amendment to the decree declared the entire King-Thompson Act constitutional and valid. On July 14, 1956, the day after the injunction issued, the strike was terminated. On August 10, 1956, the appellants and Laclede signed a new labor agreement, and on October 31, 1956, the Governor ended the seizure.

On appeal the Supreme Court of Missouri, although noting that the injunction had "expired by its own terms," nevertheless proceeded to consider the merits of certain of the appellants' contentions. The court restricted its consideration, however, to those sections of the King-Thompson Act "directly involved"—"Section 295.180, relating to the power of seizure, and subparagraphs (1) and (6) of Section 295.200, RSMo, V.A.M.S., making unlawful a strike or concerted refusal to work after seizure and giving the state courts power to enforce the provisions of the Act by injunction or other means."[5] 317 S. W. 2d, at 316. In upholding the constitutionality of these sections of the Act, the court explicitly declined to pass on other provisions which the appellants sought to attack, stating: "The sections which we have considered are severable from and may stand independently of the remainder of the Act. Although the defendants argue strenuously to the contrary, no case is made in this record for determination of the constitutionality of section 295.090, pertaining to a written labor agreement of a minimum duration, and section 295.200, subparagraphs 2, 3, 4, and 5, relating to monetary penalties and loss of seniority. We therefore refrain from expressing any opinion with reference

[4] Missouri Rev. Stat., 1949, § 295.200 (6), provides: "The courts of this state shall have power to enforce by injunction or other legal or equitable remedies any provision of this chapter or any rule or regulation prescribed by the governor hereunder."

[5] See notes 1, 3 and 4, *supra*.

thereto." 317 S. W. 2d, at 323. Accordingly, the court "limited and modified" the judgment of the trial court so as to remove all possible intimation that any provisions of the Act had been held constitutional other than those necessarily upheld in sustaining the validity of the injunction."

Because that injunction has long since "expired by its own terms," we cannot escape the conclusion that there remain for this Court no "actual matters in controversy essential to the decision of the particular case before it." *United States* v. *Alaska S. S. Co.*, 253 U. S. 113, 116. Whatever the practice in the courts of Missouri, the duty of this Court "is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Mills* v. *Green*, 159 U. S. 651, 653. See *Bus Employees* v. *Wisconsin Board*, 340 U. S. 416. To express an opinion upon the merits of the appellants' contentions would be to ignore this basic limitation upon the duty and function of the Court, and to disregard principles of judicial administration long established and repeatedly followed.[2]

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[1] The court did reaffirm an earlier decision (*State ex rel. State Board of Mediation* v. *Pigg*, 362 Mo. 798, 244 S. W. 2d 75) upholding the constitutionality of provisions of the King-Thompson Act relating to the State Board of Mediation and public hearing panels, to the extent that those sections are a necessary predicate for the additional sections with which we are now concerned. 317 S. W. 2d, at 315.

[2] See, *e. g.*, *Singer Mfg. Co.* v. *Wright*, 141 U. S. 696; *California* v. *San Pablo & Tulare R. Co.*, 149 U. S. 308; *Mills* v. *Green*, 159 U. S. 651; *American Book Co.* v. *Kansas*, 193 U. S. 49; *United States* v. *Hamburg-American Co.*, 239 U. S. 466; *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360; *United States* v. *Alaska S. S. Co.*, 253 U. S. 113; *Brownlow* v. *Schwartz*, 261 U. S. 216; *Alejandrino* v. *Quezon*, 271 U. S. 528; *Barker Co.* v. *Painters Union*, 284 U. S. 462.

In *Harris* v. *Battle*, 348 U. S. 803, these principles were given concrete application in a context so parallel as explicitly to control disposition of the primary issue here. That case originated as an action to enjoin the enforcement of a Virginia statute, markedly similar to the King-Thompson Act, under which the Governor had ordered that "possession" be taken of a transit company whose employees were on strike. Although the labor dispute was subsequently settled and the seizure terminated, the trial court nevertheless proceeded to decide the merits of the case, holding that the seizure was constitutional. *Harris* v. *Battle*, 32 L. R. R. M. 83. The Virginia Supreme Court refused an appeal. *Harris* v. *Battle*, 195 Va. lxxxviii. In this Court it was urged that the controversy was not moot because of the continuing threat of state seizure in future labor disputes.[4] It was argued that the State's abandonment of alleged unconstitutional activity after its objective had been accomplished should not be permitted to forestall decision as to the validity of the statute under which the State had purported to act.[5] It was contended that the situation was akin to cases like *Southern Pac. Terminal Co.* v. *Interstate Commerce Comm'n*, 219 U. S. 498, 514–516.[6] In finding that the controversy was moot, the Court necessarily rejected all these contentions. 348 U. S. 803. Upon the authority of that decision the same contentions must be rejected in the present case. See also *Barker Co.* v. *Painters Union*, 281 U. S. 462; *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360.

However, as the appellants point out, the decision in *Harris* v. *Battle* is not completely dispositive here because, unlike the Virginia statute, the King-Thompson Act con-

[4] See jurisdictional statement in *Harris* v. *Battle*, No. 111, O. T. 1954, pp. 12–13.

[5] *Ibid.*

[6] *Ibid.*

tains provisions which impose: (1) monetary penalties upon labor unions which continue a strike after seizure;[11] and (2) loss of seniority for employees participating in such a strike.[12] The Missouri court found that these separable provisions of the Act were not involved in the present case, and it carefully refrained from passing on their validity.[13] The court noted that liability for monetary penalties had been asserted in a separate lawsuit, 317 S. W. 2d, at 314, and the parties have informed us that the action is still pending in the state courts.

We cannot agree that the pendency of that litigation gives life to the present appeal. When that claim is litigated it will be subject to review, but it is not for us now to anticipate its outcome. "'Constitutional questions are not to be dealt with abstractly' . . . . They will not be anticipated but will be dealt with only as they are appropriately raised upon a record before us. . . . Nor will we assume in advance that a State will so construe its law as to bring it into conflict with the federal Con-

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[11] Missouri Rev. Stat., 1949, § 295.200 (3), provides: "Any labor organization or labor union which violates paragraph 1 of this section shall forfeit and pay to the state of Missouri for the use of the public school fund of the state, the sum of ten thousand dollars for each day any work stoppage resulting from any strike which it has called, incited, or supported, continues, to be recovered by civil action in the name of the state and against the labor organization or labor union in its commonly used name."

[12] Missouri Rev. Stat., 1949, § 295.200 (2), provides: "It shall be unlawful for any public utility to employ any person or employee who has violated paragraph 1 of this section except that such person or employee may be employed only as a new employee."

[13] See p. —, *supra*. Since neither the statutory penalties nor possible loss of seniority turn on the validity of the injunction, this case is quite unlike *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, where the very judgment in controversy imposed financial liability. Nor did this case involve a "perpetual" injunction. See *Bus Employees* v. *Wisconsin Board*, 340 U. S. 416, n., at 417–418.

stitution or an act of Congress." *Allen-Bradley Local* v. *Wisconsin Board*, 315 U. S. 740, at 746.

The guiding principle is well illustrated in *American Book Co.* v. *Kansas*, 193 U. S. 49. There the Kansas Supreme Court had ousted the appellant from doing business in the State until it complied with provisions of the local law governing foreign corporations. Pending appeal the appellant satisfied the judgment by complying with the requirements of the statute. But meanwhile the State had brought another action against the appellant to void contracts it had made prior to the date of its compliance. Because of this pending litigation the appellant argued that "'there still exists a controversy, undetermined and unsettled,' involving the right of the State to enforce the statute against a corporation engaged in interstate commerce." 193 U. S., at 51. What the Court said in rejecting that argument and dismissing the appeal as moot is entirely relevant here. "[T]hat suit is not before us. We have not now jurisdiction of it or its issues. Our power only extends over and is limited by the conditions of the case now before us." 193 U. S., at 52. See *Alejandrino* v. *Quezon*, 271 U. S. 528.

The asserted threat to the seniority rights of Laclede employees is even more speculative. Almost four years have passed since the strike, and the appellants concede that no action has been taken to deprive any employees of their seniority. Moreover, the section of the Act which relates to seniority rights imposes no legal sanctions on the employees or their unions, but makes unlawful only the action of the utility company which rehires the employees without loss of seniority.[14] In the unlikely event that a legal proceeding should now be brought against Laclede for having done so, there is no way to

[14] See note 12, *supra*.

know what the outcome of such a proceeding in the Missouri courts might be.[1]

The decision we are asked to review upheld only the validity of an injunction, an injunction that expired by its own terms more than three years ago. Any judgment of ours at this late date "would be wholly ineffectual for want of a subject matter on which it could operate. An affirmance would ostensibly require something to be done which had already taken place. A reversal would ostensibly avoid an event which had already passed beyond recall. One would be as vain as the other. To adjudicate a cause which no longer exists is a proceeding which this Court uniformly has declined to entertain." *Brownlow v. Schwartz*, 261 U. S. 216, 217–218.

The judgment of the Supreme Court of Missouri is vacated, and the cause is remanded for such proceedings as by that court may be deemed appropriate.

Vacated and remanded.

[1] The appellee asserts and the appellants do not deny that the statute imposes no penalty for violation of the seniority provisions.

SUPREME COURT OF THE UNITED STATES

No. 42.—October Term, 1959.

Local No. 8-6, Oil, Chemical and Atomic Workers International Union, AFL-CIO, et al., Appellants, v. Missouri.	On Appeal From the Supreme Court of Missouri.

[January 25, 1960.]

Mr. Justice Black, whom The Chief Justice and Mr. Justice Brennan join, dissenting.

We think this controversy is not moot. As the Court's opinion points out, the petitioner union may still be held liable for monetary penalties and its members may lose seniority because of the strike the Missouri Supreme Court held illegal under state law. Its holding was made long after the strike had ended. It was moot then if it is moot now. But the state court treated it as a live controversy and so should we. Otherwise, the petitioner union and its members stand constantly under threats of penalties and continuing injunctions under the state statute the Missouri Supreme Court held validly applied in this case.

The wrongfulness in holding the case moot is emphasized by our belief that the state court was plainly without any jurisdiction over this controversy unless the Court wants to overrule *Bus Employees* v. *Wisconsin Board*, 340 U. S. 383, and adopt the views of the three dissenters in that case. We would follow that holding and reverse this case on the merits.